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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1435.

THE UNITED STATES, APPELLANT,

vs.

ANNIE A. COLE.

No. 1436.

ANNIE A. COLE, APPELLANT,

vs.

THE UNITED STATES.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 17, 1890.

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APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Original bill.*—Filed Nov. 19, 1888.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
ANNIE E. COLE, WILLIAM B. WEBB, SAMUEL E. Wheatley, Charles W. Raymond, and Thomas B. Entwistle, defendants. } Equity. No. 11451.

To the supreme court of the District of Columbia, holding an equity court for said district.

1. The plaintiffs, who sue in their own right, are owners in fee simple of the beds of all the streets and avenues in the city of Washington, in the District of Columbia, including those of Massachusetts avenue and M street north, in said city, hereinafter more particularly referred to.

2. The defendants are citizens of said United States and residents of the District of Columbia.

2 The defendant Annie E. Cole, although a married woman, is sued in her own right, as to her sole and separate property hereinafter named. The defendants Webb, Wheatley, and Raymond are the "Commissioners of the District of Columbia," and are sued as such. The defendant Estwistle is the "inspector of buildings" of said District, and is sued in that capacity.

3. The defendant Cole claims to own as her separate estate and is in possession of a part of lot one (1) in the heirs of John Davidson's subdivision of square No. 213 in said city of Washington, said part of said lot being triangular in shape, having a frontage of 126.38 feet more or less on the north side of M street north, and of 115.50 feet more or less on the southerly side of Massachusetts avenue, and having a third line of 51.30 feet more or less on the westerly boundary of said part, extending from Massachusetts avenue to M street, the apex of said triangular parcel constituting the easter'most point thereof. The location and shape of said parcel are indicated in Figure 1 of the diagram marked "Exhibit No. 1," herewith filed and made part hereof.

3 4. That a portion of said part of said lot has for many years been improved by a three-story and basement brick dwelling house, the outer lines of which are indicated in figure 1 of the annexed diagram by the solid black lines inclosing the words "Mrs. Cole's residence," leaving the eastern end of said parcel, having a frontage of 55.68 feet more or less on M street and 52.8 feet more or less on Massachusetts aveuue vacant and unoccupied by any building.

5. That on or about the 17th day of September, A. D. 1888, the defendant Annie E. Cole commenced the building of the foundation walls of a new brick structure, said walls being partially as to the outer lines thereof coincident with and partly as to the whole thereof exterior to the street boundary lines of said vacant portion of said parcel of land, and in so far as the same are exterior to said boundary lines being entirely upon the land of these complainants. The lines of said foundation walls are clearly indicated in Figure 2 of the annexed diagram "Exhibit No. 1."

4 That said defendant Cole has since said date, by her servants, agents, and employés, partially erected and is still engaged in building a superstructure upon said foundation walls, which has already

attained the height of some ten feet more or less above the level of the surrounding ground, the intention of said defendant being, as complainants are informed and believe, to carry up said superstructure to the height of three full stories above, besides a basement story partly above the ground.

6. That complainants are informed and believe, and believing they aver, that in the erection of the said building the said Annie E. Cole is acting under the pretended authority of the defendant Entwistle, as inspector of buildings as aforesaid, as contained in a certain "permit," so-called, issued by the said Entwistle as inspector as aforesaid, by and with the consent, authority, and approval of the defendants Webb, Wheatley, and Raymond, as Commissioners as aforesaid, a copy of which said so-called permit is herewith filed, marked "Exhibit No. 2," and made part hereof; which said so-called permit, issued to said Annie E. Cole in pursuance of her written application therefor, addressed to the said Entwistle, in-
5 spector as aforesaid, a copy whereof, marked "Exhibit No. 3," is herewith filed and made part hereof, the plans referred to in said application being those shown in Figures 1 and 2 of "Exhibit No. 1" hereinbefore referred to. And complainants aver that although the said so-called permit pretends to authorize the erection by the defendant Cole, of an addition to the dwelling house already standing as aforesaid on a portion of said parcel of land, the said structure so as aforesaid in course of erection is so designed and contrived that it may be, if completed, used as an independent dwelling house, separate and distinct from that to which the same is a pretended addition, and on information and belief complainants aver that it is the intention of the defendant Cole to make such use thereof should she be permitted to complete the building thereof.

7. And complainants aver that the said so-called permit is totally insufficient and inoperative in law to authorize the erection by the defendant Cole of the said building, but, on the contrary, in so far as the same pretends to authorize the erection of walls exterior to the limits
6 of said Cole's individual holding is utterly null, void, and of no effect.

8. The complainants further aver that the erection of the building contemplated by the defendant Cole would involve an invasion of the complainants' rights of property and, by encroaching upon the adjacent streets, would constitute a grievous public nuisance.

And being without remedy at law complainants ask the intervention of this a court of equity and, the premises being considered, pray as follows, viz:

Prayers.

1. That the United States' writ of subpœna may issue to the said defendants, Annie E. Cole, William B. Webb, Samuel E. Wheatley, Charles W. Raymond, and Thomas B. Entwistle, requiring them severally to appear and answer the exigencies of this bill upon their several corporal oaths.

2. That the defendant Annie E. Cole, her agents, servants, and employés, be enjoined and restrained from further proceeding with the erection of the building in the 5th paragraph of this bill described, and
7 further that she and they be enjoined and required to remove the said structure so far as the same is already built and so far as the

same occupies ground exterior to the lines of said Cole's said parcel of land, and to restore such part of the land now occupied by the partially built walls of said structure as lies outside of said lines to the same condition in which it was before the commencement of said building.

3. That the defendant, Entwistle, as inspector of buildings as aforesaid, be required to cancel said so-called "permit," and that he be enjoined and restrained from granting any other pretended permission to the said defendant, Cole, for the erection of any other building on said parcel of land of said defendant, Cole, any part of which shall occupy ground exterior to the lines of said parcel.

4. That the defendants, Webb, Wheatley, and Raymond, as Commissioners as aforesaid, may be required to withdraw their approval and sanction from the said so-called permit and be enjoined and restrained from granting, approving, or sanctioning any other permit for the erection on
8 said parcel of land of any other building any portion of which shall occupy ground exterior to the outlines thereof.

5. That the complainants may have such other and further relief in the premises as the nature of the case may require.

THE UNITED STATES OF AMERICA,
By JNO. BLAIR HOGE,
Their attorney in and for the District of Columbia.

JNO. BLAIR HOGE,
Solicitor for complainants.

DISTRICT OF COLUMBIA, *County of Washington:*

John Blair Hoge, being duly sworn according to law, deposes and says as follows: I do solemnly swear that I have read the foregoing bill by me subscribed in behalf of the United States of America as their attorney in and for the District of Columbia, and know the contents thereof, and that the facts therein stated, upon my personal knowledge, are true, and that the facts therein stated upon information and belief I believe to be true.

JNO. BLAIR HOGE.

Subscribed and sworn to before me this 19th day of November, A. D. 1888.

R. J. MEIGS,
Clerk.
By L. P. WILLIAMS,
Asst. Clk.

9 Exhibit No. 1, a plat in Figs. 1 & 2, to original bill.

(Here follows plat marked, page 9.)

10 Exhibit No. 2 to bill.

(Form B.) No. 468.

Permit to repair or reconstruct buildings.

DISTRICT OF COLUMBIA,
OFFICE OF INSPECTOR OF BUILDINGS,
Washington, Sept. 7, 1888.

This is to certify that Mrs. Annie A. Cole has permission to build a three-story and basement brick addition 24′ x 46′, including a projection

5′ x 44½′ on Mass. ave., and one on M st., 5′ x 48′, as per plan annexed and approved by the Commissioners in accordance to No. 1400 Mass. ave., N. W., with application No. 468, on file in this office, and subject to the provisions of the building regulations of the district.

The right is reserved to examine the buildings as often as may be necessary while in course of alteration or repair, and order any change in the construction that may be deemed requisite to insure sufficient strength, solidity, and safety from fire.

By order of the Commissioners, D. C.

(Signed THOS. B. ENTWISTLE,
Inspector of Buildings.

Pd. $1.00.

11 SEPT. 12th, 188—. Substitute for the within two projections on Mass. ave., 16′ 6″ and 26′ 6″ wide, and two on M st., 16′ and 29′ wide, approved by the Commissioners, D. C.

12 Endorsed on the foregoing permit are the following:

Extracts from regulations.

[Endorsed on permit.]

UNITED STATES
v.
ANNIE E. COLE & AL. } Equity No. 11451.

Exhibit No. 2 with bill.

SEC. 6. No building or other structure, awning, sign, engine, steam-boilers, furnace, heating-range, bay-window, show-window, tower, or other projection shall be erected; nor any area, vault, cellar, basement, or excavation appurtenant to a building or other structure be made; nor alteration allowed in any such improvement, unless a permit for such alteration or improvement shall have been issued; and such permit shall be valid and in force for such period in each case not exceeding eighteen (18) months, as the inspector of buildings shall determine, and inscribe upon the face thereof.

SEC. 26. Persons engaged in the erection, alteration, or repair of any buildings, may, for such reasonable period as the inspector of buildings shall decide, occupy public space with building material, as follows, viz:

1st. Material will not be stored beyond eleven (11) feet exterior to the curb, or within eight (8) feet of railroad track when practicable.

13 2nd. Where the width of carriage-way of any street between curb and railroad track is less than sixteen (16) feet the inspector of buildings may issue a special permit for the occupation of not more than eleven (11) feet from the curb, nor less than three (3) feet from the track.

3d. All material of whatsoever nature deposited outside the park line must be securely stacked, so as to occupy no more than the needful area.

4th. Not less than six (6) feet must be kept clear in the middle of sidewalks.

5th. The dressing of materials on the streets and sidewalks is prohibited; but by special permit stone and brick or other material may be dressed within the park line if suitably enclosed by a tight fencing. The dressing of old material will be under the direction of the inspector of buildings and in general conformity with these regulations.

6th. Mortar-beds may be placed upon the parking or roadway; if upon the roadway, the distance from the curb shall be fixed by the inspector of buildings; but in no case to exceed eleven (11) feet from the curb. If upon a roadway of concrete, asphalt, or bituminous pavement, the
14 bottoms must be of tight tongued and grooved boards, placed upon two (2) inch bearers or sleepers, leaving an air space, and protected on all sides by a margin of two (2) inch boards not less than six (6) inches high above the floor surface.

7th. Builders may occupy twenty (20) feet of the roadway fronting adjoining lots, when considered necessary and permitted by the inspector of buildings.

8th. All material to be placed and arranged as the inspector may direct, and all materials and rubbish shall be removed by the contractor or owner of the property when so directed by the inspector of buildings. No gutter shall be obstructed, except for temporary damming for collecting water for building purposes, when there are no available means therefor, under such conditions as the inspector of buildings may prescribe.

9th. Builders or owners occupying the roadway or sidewalk shall exhibit a light at night, placed in such manner as to warn the public that material is on the street and to distinctly show that there is a clear passage left in road and footway. When the materials occupy twenty (20) feet or more along the street or sidewalk, two (2) lights, one at each end, shall be hung clear of the obstructions. Nothing in this section
15 shall be constructed so that free passage of carriages, wagons, carts, or other conveyances shall be obstructed or impeded.

10th. No change shall be made in the limits or outline of any parking or terrace, nor shall any parking fence or terrace be moved, constructed, altered, or modified except in accordance with plans presented to and approved by the inspector of buildings.

Sec. 34. The fees under these regulations shall be as follows: For each permit for new building or other structure, two dollars for each building; for each permit for alteration or repairs, one dollar for each building or structure; for each permit for vault, two dollars per lineal foot of proposed vault; for each permit of area in front of the building line of any building now erected, or any structure or building hereafter erected, after the same shall have been completed, one dollar for each area; for all other permits and certificates, one dollar each; for measuring, under section 9, in the matter of party walls, the fee shall not exceed five dollars, except in cases of express agreement; and for examination of dangerous buildings, defective escape facilities, or other defective or insufficient arrangements or appliances in public assembly rooms, on appeal, the fee shall be as prescribed in section 3.

By order of the Commissioners, D. C.

THOMAS B. ENTWISLE,
Inspector of Buildings.

16 Exhibit No. 3 to bill. [Exhibit No. 3 filed with bill.]

Form B. 468.

Application for permit for repairs, alterations, etc.

WASHINGTON, D. C., *Sept. 7th*, 1888.

To the Inspector of Buildings:

The undersigned applies for a permit to extend the following-described building:

Description of present building.

Where located: 1400 Mass. ave., N. W.
No. of buildings to be altered: One.
Name of owner: Mrs. Annie A. Cole.
Material: Brick dwelling.
The cost of proposed improvements: $8,000.

Nature of proposed alterations, etc. Give definite particulars.

To build a three-story and basement brick addition 24′ x 46′, including a projection 5 x 44½ on Mass. ave. and one on M st. 5 x 48, as per plan annexed and approved by the Commissioners, Sept. 12, '88. Substitute for the above two projections on Mass. ave., 16′ x 6″ and 26′ x 6″ wide, and two on M st., 16 and 29 wide, approved by the Commissioners, D. C.

The building be used after alteration? Dwelling.

After alteration, will the building conform in every respect with the requirements of the building law? Yes.

(Signature:) ANNIE A. COLE.

Endorsed as follows:

17 Endorsements on applications for permit, &c.

$1. DISTRICT OF COLUMBIA,
OFFICE OF INSPECTOR OF BUILDINGS,
Washington, D. C., Sept. 7, 1888.

Received of Mrs. Anna A. Cole the sum of one dollar for permit to extend one brick building, as specified in foregoing application.

THOS. B. ENTWISLE,
Inspector of Buildings.

No. 468.
Application for permit for repairs, alterations, &c.
Owner: Mrs. Annie A. Cole.
Location: 1401 Mass. ave., N. W.
Permit granted Sept. 7, 1888.
$8,000.

18 *Notice of hearing of application for injunction.—Nov.* 19, 1888.

Ordered, on motion of complainants, that notice be given to the defendants by service of copy of this order and of the bill upon them, on or before Wednesday next; that the motion for an injunction in this cause will be heard on Friday, the 23d instant.

WM. M. MERRICK, *A. J.*

NOV. 19, 1888.

19 *Subpœna to answer.—Issued Nov.* 19, 1888.

In the supreme court of the District of Columbia, November 19th, 1888.

THE UNITED STATES OF AMERICA, COMPLAINANT, *against* A. E. COLE ET AL., DEFENDANT. } No. 11451. Equity docket 28.

The President of the United States, to Annie E. Cole [fi. Nov. 20, '88, Kiy]. Wm. B. Webb, Saml. E. Wheatley, Charles W. Raymond, and Thomas B. Entwisle, defendant.

You are hereby commanded to appear in this court at its first special term, occurring ten days after service of this subpœna, and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award..

Witness:

E. F. BINGHAM,
Chief-Justice.

[L. S.]

R. J. MEIGS,
Clerk, &c.,
By R. J. MEIGS, JR.,
Asst. Clerk.

Memorandum: That the defendant, herewith served, is to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable, otherwise the bill may be taken for confessed.

20 *Return of marshal.—Filed Nov.* 20, 1888.

Service of subpœna and copy of bill and notice of hearing acknowledged this 20th day of November, A. D. 1888.

HENRY E. DAVIS,
For Defendants Webb, Wheatley, Raymond, and Entwisle.

Served copy of subpœna & copy of bill & notice of hearing on Annie E. Cole Novem. 20, 1888. Service acknowledged for Wm. B. Webb, Saml. E. Wheatley, Chas. W. Raymond, & Thos. B. Entwisle.

By H. E. DAVIS, *Att'y.*

NOVEMBER 20, 1888. See above.

J. B. HOGE.

A. A. WILSON,
Marshal.

21 *Answer of Commissioners, &c.—Filed Nov.* 26, 1888.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA *vs.* ANNIE E. COLE, WILLIAM B. WEBB, SAMUEL E. Wheatley, Charles W. Raymond, and Thomas B. Entwisle. } In equity. No. 11,451.

The joint and several answer of the defendants, William B. Webb, Samuel E. Wheatley, Charles W. Raymond, and Thomas B. Entwisle, to the bill of complaint.

These defendants, reserving to themselves all manner of benefit and advantage of the many errors and imperfections in the said bill of complaint contained, for answer thereto, or so much thereof as they are advised it is material or necessary for them to answer, answering say:

1. That the Supreme Court of the United States has decided that the fee of the streets and avenues is in the United States, but these defendants submit that while they remain such streets and avenues they are held in trust for the public use, and also for abutting property-owners for
22 such appurtenant easements and uses as have from the foundation of the Government been specified and provided for by the Presidents of the United States and other of its officers and agents duly authorized to specify and provide for the same.

2. They admit the allegations of the second paragraph of the complainant's bill.

3. These defendants admit, as alleged in the third paragraph of said bill of complaint, that the defendant Cole claims to own, as her separate estate, property drescribed in said paragraph.

Further answering said paragraph, these defendants attach hereto and pray to be taken as part hereof a true and accurate copy of the map or plat filed by the defendant Cole with the defendant Entwisle, the inspector of buildings of the District of Columbia, when applying for a permit for the erection of the building complained of, showing the dimensions of the proposed building and the extensions thereof within the parking limits, and the same is marked as "Exhibit D. C., No. 1," and prayed to be taken as part hereof. The new building proposed to be constructed is represented by red lines on said exhibit.

23 4 These defendants admit that the western portion of the lot claimed as the property of the defendant Cole has for some years been improved by a brick dwelling-house, and that the eastern end of said lot has been unimproved and vacant until the beginning of the construction of the building complained of.

5. These defendants, in answer to the allegations of the fifth paragraph of said bill, refer to "Exhibit D. C., No. 1," attached hereto, for the position of the walls of the proposed structure and the ground, with respect to the building line, intended to be occupied by the foundations, the roof, as well as the structure to be erected thereon. These defendants are not advised as to the exact time when the construction of said building was begun, but they admit that the defendant Cole has partially erected a superstructure upon the foundation walls built by her order and direction.

6. These defendants deny, as alleged in the sixth paragraph of said bill, that the defendant Cole is acting under a pretended authority given her by the defendant Entwisle, and say that she is constructing said building
24 under and by virtue of a lawful permit given to her by said defendant Entwisle, inspector of buildings for said District, in accordance with the building regulations of the District of Columbia authorized and made in pursuance of the authority conferred on the Commissioners of the District of Columbia by the act of Congress of June 14, 1878; that said permit was issued upon an application in writing made to said defendant Entwisle, as inspector of buildings, by the defendant Cole.

These defendants refer to the permit and application for the terms and conditions thereof. These defendants are not informed as to the allega-

tions of the said paragraph about the use to be made of said proposed structure by defendant Cole, but they say that the structure in course of erection is being built in strict accordance with the building regulations and the permit issued thereunder to said defendant Cole.

7. These defendants deny each and every averment of the seventh paragraph of said bill.

8. They deny the averments of the eighth paragraph of said bill.

25 Further answering said bill of complaint, these defendants say that on July 7th, 1794, the President of the United States made and published what is known as building regulation No. 2, authorizing and allowing areas or ditches of seven feet in breadth constructed in the street immediately adjacent to the building owned by the person applying for the privilege, provided said area or ditch was suitably secured (Webb's Digest, p. 58); that on the 15th day of May, 1820, the charter of the city of Washington was amended, and said act vested the corporation of Washington with power, among other things, "to regulate, with the approbation of the President of the United States, the manner of erecting and the materials to be used in the erection of houses;" that thereafter, and on March 30, 1822, and in pursuance of the authority so given, the corporation of Washington passed an ordinance authorizing the construction of vaults under sidewalks by property-owners not to extend beyond the curb line; also the construction of areas in streets and avenues having a width of footway of seventeen feet, but not more than five feet from the building line; also the construction of steps and cellar doors in streets

26 and avenues having a width of footway of seventeen feet or more, to project not more than seven feet from the building line and in streets and avenues with a footway of twelve feet to project not more than five feet from the building line; also that colonnades or open porches might be erected in the streets and avenues, not to project beyond the building line further than is prescribed for steps or cellar doors, which ordinance these defendants beg leave to refer to at the hearing hereof.

Further answering, they say that by the act of Congress of February 21, 1871, the board of public works, by said act created, was given entire control of the streets, avenues, and alleys of the District of Columbia, and was also authorized to make needful building regulations, subject to the supervision of the legislative assembly; that said board, in pursuance of authority given, adopted a general plan for the improvement of the streets and avenues of said District, which was approved by the legislative assembly of said District; that pursuant to the plan so adopted said board was authorized to do and did cause parking to be placed next adjoin-

27 ing the building line of a width of thirteen feet on M street and forty feet on Massachusetts avenue along the entire front of the defendant Cole's property on said street and avenue, and extending from said M street around the most easterly part of the property of said defendant Cole until it intersects the parking on said Massachusetts avenue, and said board caused said parking to be suitably enclosed with a fence, and the same has since remained there; that outside of and exterior to said parking on said street and avenue there is a footway of the width of twelve feet on said M street and fifteen feet on said Mass. ave., which is amply sufficient for the accommodation of persons using said street and avenue; that said parking so constructed has ever since remained; that

said M street is ninety feet in width and said Massachusetts avenue one hundred and forty feet at the point where said Cole's property fronts on or touches the same.

Further answering, they say that on the 14th of June, 1878, the Congress of the United States passed an act authorizing and directing
28 the Commissioners of the District of Columbia to make and enforce such building regulations for said District as they might deem advisable, and further provided that such regulations when made should have the same force and effect within the District as if enacted by Congress; that, as directed by said law, the Commissioners of the District of Columbia made certain building regulations, and from time to time amended the same, and these defendants attach hereto and pray to be taken as part hereof the building regulations of said District now in force, and which were in force at the time of the issue of the permit complained of, and the same is marked as "Exhibit D. C., No. 2," and attention is especially directed to the provisions regulating projections, on pages 22 and 23 of said exhibit, which have not been changed in any particular since said regulations were first enacted under said act of Congress.

Further answering, these defendants say that said building regulations, by virtue of the act of Congress authorizing and directing the Commissioners to make the same, have the same force and effect in the
29 District of Columbia as if the same had been formally enacted and approved by Congress; that the legality of the same has never been questioned by Congress, and whenever brought to the notice of the court of this District have always been upheld.

Further answering, they say that under various acts of Congress, ordinances of the corporation of Washington, and building rules and regulations from an early day of the Government, and public usage under them of near a century, the right of a lot-owner and builder to the privilege of building a vault, steps to enter his doors, outside stairways, porticos, colonnades, bay-windows, balconies, verandas, and ornamental projections over the building line has become a part of the law of the city, and as such must be respected and upheld.

Further answering, they say that the application of said defendant Cole, made under the building regulations in force at the time of the filing thereof, as shown by Exhibit D. C., No. 2, and the permit issued in pursuance thereof, authorizes no more or greater projections than are and have been allowed to others, and said regulations are in law and
30 equity a complete authority for the structure she is now building.

Further answering, they say that said parking was set aside by the authorities of the District of Columbia for the convenience of the adjoining property-owner, to be put to such uses as he might think best, not inconsistent with or repugnant to the laws in force in said District; that said projections of said building, authorized by said permit, are in no way an invasion of the use of said street and avenue and never can become such; that the United States has not, nor does it intend to devote said space so allotted as aforesaid to parking, and a part of which is to be occupied by the proposed structure, to any other purpose, and the projections aforesaid are not an invasion of the plaintiff's rights of property, and to complain of it is absurd; that if the projections complained of are such an encroachment upon the public streets as will constitute a grievous pub-

lic nuisance, then may every owner of a vault, projecting door-step, bay-window, or other projection from his dwelling over a building line
31 be indicated for a public nuisance.

Further answering, these defendants say that they pray the same benefit of this their joint and several answer as if they had demurred to said bill.

And now, having fully answered, they pray to be hence dismissed with their reasonable costs in this behalf sustained.

A. G. RIDDLE,
Solicitor for Defendants.
WILLIAM B. WEBB,
Commissioner.

DISTRICT OF COLUMBIA, *ss:*

William B. Webb, being duly sworn, deposes and says that he is one of the Commissioners of the District of Columbia and a defendant in the above-entitled action; that he has read over the answer by him subscribed and knows the contents thereof; that the facts therein stated of his own knowledge are true, and those stated on information and belief he believes to be true.

WILLIAM B. WEBB, *Comm.*

Subscribed and sworn to before me this the twenty-sixth day of November, A. D. 1888.

WILLIAM TINDALL, [L. S.]
Notary Public.

32 Exhibit D. C., No. 1, is identical with Figure 1 of Exhibit 1, filed with bill.—Filed Nov. 26, 1888.

33 Exhibit D. C., No. 2, with answer of Dist. Col'a.—Filed Nov. 26, 1888. No. 9.

Building regulations of the District of Columbia, revised and adopted November 1, 1887.

[Philadelphia: Dunlap & Clarke, printers and binders, 819 and 821 Filbert street. 1887.]

34 THE DISTRICT OF COLUMBIA,
OFFICE OF THE COMMISSIONERS,
Washington, November 1, 1887.

Whereas the act of Congress approved June 14, 1878, provides that the Commissioners of the District of Columbia shall make and enforce such building regulations for the said District as they may deem advisable, and that the regulations so made shall have the same force and effect within the District of Columbia as if enacted by Congress; it is

Ordered, first. That the following regulations are hereby adopted as the building regulations of the District of Columbia.

Second. These regulations shall control the construction, erection, maintenance, repair, and removal of all buildings, wharves, and other like structures within the District of Columbia, with the exception of those owned by or under the sole control of the United States.

Third. These regulations are subject to modification or repeal by Congress, or by the Commissioners of the District of Columbia, as the public interests shall require.

WILLIAM B. WEBB,
SAMUEL E. WHEATLEY,
WILLIAM LUDLOW,
Commissioners of the District of Columbia.

Attest:

WILLIAM TINDALL,
Secretary.

35 *Building regulations of the District of Columbia.*

SECTION 1.—*Definition of technical terms.*

Adjoining owner: The owner of the premises adjoining those on which work is doing or to be done.

Areas: Subsurface excavations adjacent to the building line for lighting or ventilation of cellars or basements.

Attic story: A story situated either in whole or in part in the roof.

Basement: A story suitable for habitation, partially below the level of the adjoining street or ground, and below the first floor of joists.

Bay-window: A first-floor projection for a window other than a tower projection or show-window.

Building: Any construction within the scope and purview of these regulations.

Building line: The line of demarkation between public and private space.

Building owner: The owner of premises on which work is doing or to be done.

Cellar: That portion of a building below the first floor of joists, if partially or entirely below the level of the adjoining parking, street, or ground, and not suitable for habitation.

External wall: The outer wall or enclosure of a building other than a party wall.

Fire limits: All that portion of the cities of Washington and Georgetown bounded by Fifteenth street, east; Georgia avenue, Eleventh
36 street, east; O street, south; Ninth street, east; M street, south; the west bank of the James Creek Canal, Water street, Lingan or Thirty-sixth street, U or Road street, Rock Creek, P street and Boundary street to Fifteenth street, east.

First story: The story the floor of which is at or first above the level of the sidewalk or adjoining ground. The other stories to be numbered in regular succession, counting upward.

Foundation wall: That portion of an exterior wall below the surface of the adjoining earth or pavement; and that portion of a partition or party wall below the level of the basement or cellar floor.

Lodging-house: Any building or portion thereof in which persons are lodged for hire for less than a week at one time.

Mansard roof: A roof formed with an upper and under set of rafters, the upper set more inclined to the horizon than the lower set.

Oriel window: A projection for a window above the first floor.

Parking: The space between the sidewalk and the building line.

Parking line: The line separating parking and sidewalk.

Partition: An interior division constructed of iron, glass, wood, lath and plaster, or other destructible materials.

Partition wall: An interior wall of non-combustible material.

Party wall: A wall built upon the dividing line between adjoining premises for their common use.

Shed: A skeleton structure for storage or shelter.

Show-window: A store window in which goods are displayed for sale or advertisement.

Tenement house: Any building or portion thereof which is occupied or is intended for occupation as the residence of more than two families living independently of one another, and doing their cooking upon the premises.

Tower projection: A projection designed for an ornamental door entrance, for ornamental windows, or for buttresses.

Vault: An under-ground construction beneath parking or sidewalk.

Wooden building: Any building of which an external or party wall is constructed in whole or in part of wood.

37 SECTION 2.—*Duties of the building inspector.*

1. The inspector of buildings shall take and subscribe on oath or affirmation, before an officer duly qualified to administer the same, that he has been engaged in business as an architect, or architect and builder, for ten years, and that he will faithfully perform the duties of his office. Said oath or affirmation shall be filed in the office of the Commissioners of the District of Columbia.

2. He shall, also, before entering upon the duties of his office, execute a bond to the District of Columbia in the sum of ten thousand dollars, with three sureties, to be approved by the Commissioners of said District, conditioned for the faithful performance of the duties of said office, which shall be for the benefit of all parties aggrieved by his acts or neglect, and shall be filed with his oath.

3. He shall be charged, under the supervision of the Commissioners, with the survey and inspection of buildings and the enforcement of these regulations, and with such other duties in respect thereto as the Commissioners may assign to him; and while holding his office he shall not engage or be interested in business as an architect or builder in the District.

4. It shall be his duty to sign and issue all permits, certificates, and notices under these regulations; to keep on file all applications, plans, and notices received; to keep the record of all violations of these regulations and all matters relative thereto, and report them, when necessary, to the Commissioners; to keep blanks for permits, certificates, notices, applications, and complaints; to make annual report of the operations of his office, and such other reports as may be required by the Commissioners.

5. He shall examine all buildings in course of erection, alteration, or repair as often as necessary; shall see that the work is done in accordance with the law and regulations; that the materials used are suitable for the purpose, and that the work is done in a substantial manner, and is of sufficient strength and solidity to answer the purpose for which it was designed.

6. He shall examine any building supposed or reported to be in a dangerous or defective condition, and make a record of such examination; of the location of the building; the purposes for which it is used, and the names of the owner and lessee and occupant.

38 7. If, after examination, he shall deem any structure or building, or part thereof, or appurtenance thereto, dangerous, he shall serve upon the premises a notice requiring a vacation of said structure or building, and also serve, or cause to be served, a notice in writing upon the owner, agent, or any party having interest in said structure, requiring the same to be made safe and secure, or removed, as the inspector may deem necessary, within such time as he may direct; and it shall thereupon be the duty of the said interested party or parties to comply with and execute the order of the inspector of buildings, under the penalties for failure as provided by section twenty of these regulations, unless appeal be taken as hereinafter provided. Upon depositing thirty dollars, to cover fees of an examining commission, the interested parties may appeal within forty-eight hours, in writing, to the Commissioners of the District, who shall appoint a commission to determine the question at issue, which shall consist of two disinterested and competent builders and one architect, residents of the District, who shall be paid for their services not exceeding ten dollars each, upon the certificate of the inspector of buildings. In case of a decision adverse to the appellant, it shall be the duty of the appellant to comply therewith, when duly notified thereof in writing by the inspector of buildings, under penalties for failure as provided in section twenty of these regulations.

8. He shall, after examination, serve a written notice upon the owner, agent, or other party interested in any building or part thereof regarded by him as defective, setting forth in detail the necessary repairs; and if the parties interested shall refuse or neglect to have the repairs as stated made, or shall not have actually commenced to make the same within thirty days from the date of notice thereof, then the inspector of buildings shall order the building to be vacated.

9. He shall examine any building when application shall be made for a permit to raise, enlarge, alter, or build upon it, and make a record of its condition.

10. He shall have supervision of the erection of all heating apparatus, and be required to notify the boiler inspector when a permit is issued for locating a boiler.

11. He shall carefully examine the plans and the specifications of all buildings for the construction of which permits are applied for,

39 and ascertain that they conform to the requirements of these regulations before giving a permit for the erection of such building; and shall file in his office such plans and specifications as he shall require.

12. He shall, whenever he may deem necessary, serve written notice on the owner, lessee, or manager of any building or part of building already erected, or hereafter built and used or to be used in whole or in part for public assemblies, directing to be done in or about the arrangement thereof, and the appliances connected therewith, whatever is needful to afford the greatest possible security to the public, and good ventilation; subject to appeal and determination by a commission, appointed as in the manner of dangerous and defective structures.

13. He shall have full power to require the intent of these regulations to be observed in all matters affecting structures, not specifically set forth herein; but he shall have no discretionary power to modify any of these regulations.

14. He shall have full authority to designate and direct the numbering of all buildings and to order changes to be made in the numbering of any building already numbered, when needful; and any person refusing to number or renumber as directed by the inspector within such time as he shall order, shall be liable to penalty as provided in section twenty of these regulations.

15. The inspector of buildings and assistant inspectors of buildings, when duly appointed by the Commissioners, as far as may be necessary for the performance of their duties, shall have the right to enter any building or premises upon showing their badge of office; and any person who shall interfere with them in the performance of such duties shall be liable to a fine of not less than ten nor more than forty dollars for each offense.

16. No building or other structure, awning, sign, engine, steam-boiler, furnace, heating-range, bay window, show window, tower, or other projection shall be erected or maintained after erection, nor any area, vault, cellar, besement, steps, or excavation appurtenant to a building or other structure be made, nor alteration allowed in any such improvement, unless a permit for such erection, alteration, or improvement shall have been issued by the inspector of buildings; and such building permit shall be valid and in force for such period in each case, not exceeding ninety (90) days, as the inspector of buildings shall determine and inscribe upon the face thereof. In case of failure to commence work in ninety (90) days, for satisfactory reasons, the building inspector may renew permits without additional charge.

17. No permit shall be given for the construction of dwellings fronting on alleys before arrangements are made for proper drainage and water supply.

18. The inspector of buildings will not issue permits for any construction to be used in connection with a business requiring a special license, until such time as the applicant shall present the license to accompany his application.

19. It shall be the duty of the owner or owners, in fee or for life, of every building constructed and used, or intended to be used, as a hotel, factory, manufactory, theatre, tenement-house, seminary, college, academy, hospital, asylum, hall, or place of amusement, and of the trustee or trustees of every estate, association, society, college, academy, school, hospital, or asylum owning or using any building fifty feet high or upwards, used for any of the purposes herein above mentioned, to provide and cause to be erected and affixed to said buildings iron fire-escapes and combined stand-pipes and ladders, or either of said appliances as may be approved and adopted by the Commissioners of the District of Columbia. (Act January 26, 1887.)

20. In all hotels, factories, manufactories, workshops, schools, seminaries, colleges, hospitals, asylums, halls, or places of amusement, or other places mentioned in this act, the hallways and stairways shall be properly lighted when occupied at night; and at the head and foot of each flight of stairs, and at the intersection of all hallways with main corridors, shall be

kept during the night a red light; and one or more proper alarms or gongs, capable of being heard throughout the building, shall always remain easy of access and ready for use in each of said buildings, to give notice to the inmates in case of fire; and there shall be kept posted in a conspicuous place in every sleeping-room a notice descriptive of such means of escape; and the building inspector and chief engineer of the fire department shall have the right to designate the location of the said fire-escapes and stand-pipes in conformity with this act, and shall grant certificates of approval to every person, firm, corporation, trustee, and board of school trustees complying with the requirements of this act, which certifi-
41 cates shall relieve the party or parties from the liabilities of fines or damages imposed by this act. (Act January 26, 1887.)

21. Every person, corporation, trustee, or board of school directors neglecting or refusing to comply with the requirements of the first section of this act, upon receiving thirty days' notice of the same, shall be liable to a fine not exceeding one hundred dollars, to be collected as fines are now by law collected; and the building inspector and chief engineer shall cause to be erected upon said building said appliances as in their judgment may be necessary, and the same shall be charged and held as a lien against said property and collected the same as other improvements made by the District authorities; and in case of fire occurring in any such building not provided with said appliances as may be required by the building inspector and chief engineer of the fire department, and in accordance with the requirements of the first section of this act, the person, persons, trustee, trustees, corporation, or school directors who or which neglected to provide such building with said appliances as aforesaid shall be liable in an action for damages in case of death or personal injury being caused in consequence of such fire breaking out in said building; and such action may be maintained by any person or persons now authorized by law to sue, as in other cases, for injuries caused by neglect of duty. (Act January 26, 1887.)

SECTION 3.—*Excavations and foundations.*

1. Every excavation for a cellar, vault, area, or other purposes, or adjoining any lot, shall be protected by an enclosed bridge or tight fence.

2. Every cellar or basement of a dwelling shall have a bed of hydraulic or asphaltum concrete, not less than two inches thick, spread over the entire bottom, or shall be paved with brick laid in cement.

3. Every building hereafter erected without cellar or basement shall have in the walls below floor level, in front and rear, not less than four ventilators, each not less than five by twelve inches, and no portion of the wood work of the floor shall be less than six (6) inches clear of the ground.

4. The foundation walls of every building must rest upon the solid ground, concrete, masonry, or other solid substructure, and be built
42 of brick, stone, or other hard and incombustible material laid not less than two feet six inches below the surface of the ground, and where there is a cellar or basement in a dwelling house the walls below the surface of the ground shall be fully protected from dampness by an exterior covering of hydraulic cement or slate. In case of the removal of a terrace the walls shall be underpinned, so far as necessary in the opinion of the inspector of buildings.

5. Cellar or basement walls of buildings erected within reach of tide water shall be built up to the level of spring tides, in cement mortar, and of a thickness to be determined, in each case, by the inspector of buildings, and the ground floors shall be laid water-tight, and in such manner as may be directed by said inspector.

SECTION 4.—*Construction and dimensions of walls.*

1. The walls of every building, with the exceptions hereinafter mentioned, shall be built of brick, stone, iron, or other hard and incombustible material. Every wall constructed of brick, stone, or other similar substance shall be properly bonded and solidly built with lime or cement mortar. External walls faced with stone shall have a backing of hard brick-work laid in cement mortar. The stone facing of a wall shall always be securely tied to the brick backing by suitable iron clamps. Every fifth course of brick facing must be securely bonded by headers.

2. The thickness of the walls of any building hereafter erected or altered in height shall be as follows, to wit: In any building not more than thirty-five feet high and twenty-five feet or less in width the cellar or foundation walls shall be not less than thirteen inches in thickness to the height of the first floor of joists, and thence the external or party walls not less than nine inches; for a building not exceeding thirty-five feet in height, but exceeding twenty-five feet in width, the external and party walls shall be not less than thirteen inches thick to the square thereof; in a building exceeding thirty-five feet but not exceeding forty-five feet in height the cellar or foundation walls shall not be less than thirteen inches in thickness, and the front and rear walls above not less than thirteen inches in thickness to the roof, and the party walls not less than thirteen inches thick to the height of the second-story floor, and from thence up nine inches thick, provided the nine-inch wall does not exceed twenty-four feet in height; in a building exceeding forty-five feet but not exceed-
43 ing fifty-five in height the foundation or cellar walls shall not be less than eighteen inches in thickness, the party walls not less than thirteen inches, and the other walls not less than eighteen inches to the height of the first story and thirteen inches for the remainder of the height. The walls of subcellars shall not be less than eighteen inches thick. Whenever any builder, owner, or contractor wishes to construct or erect any building to a greater height than above specified, or for other purposes than a dwelling, the increased thickness of the walls shall be determined by the inspector of buildings; but in any case where the proposed building is to be used for a store-house or similar purpose the party or division walls shall not be less than thirteen inches for the full height thereof. Walls laid with stretcher bond shall in no case be less than thirteen inches thick. The bottom course for foundation wall resting upon the ground shall be at least nine inches wider than the thickness of the wall and be bedded in cement. The height of all walls to be computed from the curb level or terrace.

3. If walls are laid with irregular rubble work the thickness shall be one-fourth greater than required in other cases. Thin ashlar facing shall not be counted in determining the thickness of walls. In any building hereafter erected on a street corner for the storage of heavy weights the

bearing wall, that is, the wall upon which the beams rest, shall be four inches thicker than is otherwise prescribed in these regulations.

4. The enclosing walls of a building must be brought up as nearly simultaneously as possible, and in no case shall the work on the side walls be ahead of the work on the front wall more than the height of one story, unless a special permit be first obtained from the inspector of buildings defining the manner in which the work shall proceed.

5. Side, end, or party walls shall be anchored at each tier of beams, at intervals of not more than ten feet, with good, strong wrought-iron anchors, one-half inch by one inch, well secured into side walls, and well fastened to the side of the beams by not less than two wrought-iron nails at least one-fourth of an inch in diameter, so as to form continuous ties across the building on each floor.

6. Party walls shall be brought up through the roof covering, and shall be built up at least six inches above the flat of the roof of the high-
44 est building of which such building forms a part for the full extent of the flat, and shall be covered by brick laid on slate, or by a coping of stone or metal, so as effectually to prevent the connection of the roofing of any two or more houses or buildings.

7. Party walls in adjoining buildings hereafter erected shall be constructed so that the floor timbers from opposite sides of said walls shall have at least four inches bearing therein and be separated by not less than four inches of solid brick-work. No door or window openings shall be placed in party walls, except by the consent of the adjoining owner and under special permit from the inspector of buildings.

8. No recess of any kind shall be made in a nine-inch, external, or party wall for any purpose whatever, nor shall a party wall be cut into more than four and one-half inches, unless the same shall be more than fourteen inches thick, nor shall the same be recessed continuously for any purpose whatever more than four and one-half inches. All brick used in the construction, alteration, or repair of a building, or any part thereof, if used during the months of April to October, inclusive, shall be well wet at the time they are laid.

9. The fourth section of the building regulations, No. 1, approved by President Washington October 17, 1791, is recognized as in force as follows:

"That the person or persons appointed by the Commissioners to superintend the buildings may enter upon the land of any person to set out the foundation and regulate the walls to be built between party and party, as to the breadth and thickness thereof, which foundation shall be laid equally upon the lands of the persons between whom such party walls are to be built, and shall be of the breadth and thickness determined by such person proper, and the first builder shall be reimbursed one moiety of the charge of such party wall, or so much thereof as the next builder shall have occasion to make use of before such next builder shall any ways use or break into the wall. The charge of value thereof to be set by the person or persons so appointed by the Commissioners."

10. *Provided*, That the maximum thickness laid upon the adjoining lot shall be nine inches in the cellar, and that the set-off shall be equal on both sides, and in all cases where a building is erected and a party-wall is constructed the party line shall be carefully preserved by receding four and

one-half inches from the front with that portion that extends over
45 that line, except in centre of continuous blocks. The privilege of placing party walls near adjacent buildings must be first approved by the inspector of buildings.

11. The building owner shall pay for one-half of an existing party wall or for so much thereof as he shall use, whether said wall be cut or not, and the quantity or measurement of wall or underpinning so used shall be computed by the inspector of buildings, unless the parties in interest agree upon some other person or persons for such purpose. The indemnity to the adjoining owner shall be paid by the building owner, previous to cutting or in any manner using said wall, at the then current price for similar work. The cost of underpinning party walls shall be borne by the building owner. Where an excavation is to be made adjacent to and below the foundation of a wall, other than a party wall, the building owner shall give adjoining owner ten days' notice, in writing, before proceeding with the work. The measuring fee shall be paid as hereinafter described and shall be paid in equal proportions by both parties to the persons selected.

12. The inspector of buildings shall, upon the application of any building owner or his authorized agent, examine any existing party or division wall, and if deemed by said inspector to be defective, out of repair, or otherwise unfit for the purpose of new buildings about to be erected, such party or division walls shall be made good, repaired, or taken down by the building owner, as the decision may be, the cost and expense of which repair or removal, together with the expense of the new wall or walls to be erected in lieu thereon, shall be borne and paid exclusively by him, and he shall also make good all damages occasioned thereby to the adjoining owner or his premises: *Provided*, That these regulations shall not be construed to justify the owner in encroaching upon the premises of the adjoining owner beyond the party wall already built, or, in the case where no party wall has been built, more than nine inches without having first obtained the written consent of the adjoining owner of the premises so to be encroached upon. But if, in such case, the building owner prefers to build an independent new wall of his own by the side of the old party wall, he shall be relieved from reimbursing the adjoining owner for former outlay in building the party wall, the thickness of the new wall to be determined by the inspector of buildings in each and every case, consistent with these regulations.

46 13. Buildings hereafter erected or increased in height, except churches, shall not exceed a greater height than seventy-five feet to the square, except the additional height shall be constructed in a fire-proof manner, as herein named, to wit: all joists, beams, rafters, purlines, jack rafters, plates, studs, ties, and arches shall be made of cast or wrought iron, or some other metal, stone, brick, cement, mortar, or other incombustible material, and covered with corrugated iron, sheet, or cast-iron, tin, copper, zinc, or other metal, or slate, stone, brick, cement, mortar, or other incombustible material. All stores or store-houses, or other buildings, except churches and dwellings, now or hereafter erected, wherein close proximity to other structures, shall, when ordered by the inspector of buildings, be provided on the rear side or sides with iron or other fire-proof shutters to all openings, and of such construction as may be stipulated, which

shutters shall be closed at the termination of each day's business. The interested party may, after being notified, appeal in writing to the Commissioners of the District, who shall determine as to the enforcement of the order.

14. No room in any building intended for human habitation or sleeping shall have less than eight feet clear height, nor shall permits be issued for any such building that is less than twelve (12) feet in width, or fronting upon an open space less than twenty (20) feet in width.

15. All partition or party fences shall be kept in good and sufficient repair by the proprietors of the ground on each side at their joint expense: *Provided*, The ground on each side shall be enclosed, used, or occupied; and if any person whose duty it shall be to make or keep in good repair any fence, or part of a fence, shall neglect or refuse to do so for five days after request being made by the other party interested, or his agent, then it shall be lawful for the party so making the request, as aforesaid, to make or repair the whole fence, or part of the fence, and to recover one-half of the expense thereof from the person so refusing or neglecting: *Provided, also*, That no fence erected under the authority of these regulations shall be less than five nor more than seven feet in height, except by consent of the parties interested on both sides of such fence, and the permission of the inspector of buildings.

16. If any person shall enclose ground adjoining to that already enclosed, and shall thereby be benefited by any fence before erected, 47 the person so benefited shall pay therefor a just and reasonable compensation, regard being had to the condition of the fence at the time.

SECTION 5.—*Construction of chimneys and flues.*

1. Chimneys shall be built of brick, stone, or other fire-proof, non-conducting material, and in no case shall a chimney rest upon a flooring without a footing of masonry or iron, supported by iron bars having a secure bearing on masonry or iron at both ends. Brick-work of all flues without reference to the purpose for which they may be originally intended to be used, must be laid with solid joints, shall be smoothly plastered inside with goiod parging mortar, or the joists stuck flush on the inside, and on the outside plastered between the ceiling joists and rafters. Brick flues not starting from the foundation wall shall be securely built into the brick-work of the walls to which they are hung, and shall be supported by courses of brick corbeled out from the main wall by successive projection. Where the breast of a chimney projects more than nine inches it shall be started and built on the same line from the foundation, or, where this is impracticable, it shall be secured in such manner as shall be determined by the inspector of buildings. Where terra cotta pipes are used for smoke flues, they must be encased with brick-work.

2. All flues shall be topped out at least four feet above the roof of the building or buildings to which they belong or adjoin, and all brick flues shall be smoothly plastered inside with mortar, from top to bottom, and outside, between the roofing and ceiling joists. The brick topping out of chimneys and flues shall not have more than four inches projection, unless

covered by a cap of stone or iron properly secured. Hearths, fire-places, or grates shall be laid upon trimmer arches of brick, turned the full length of the chimney breast, the centering of which must be struck by brick-layers on completion of the arch, or upon bars of iron supporting trimmer arch. No wooden joists, rafters, beams, girders, or other wood shall be built into any chimney, flue, or fire-place whatever; nor shall they, or wood-work of any kind, be placed at a less distance than two inches from the outside of the brick-work or any flue or fire-place, nor shall any flue or fire-place be built in any party or division wall unless the back of the flue or fireplace be nine inches thick. In no case shall a nail be driven
48 into the masonry of any flue, nor shall any base, flooring, or roofing, or any other wood-work, be placed against any flue until it shall be well plastered externally with proper material.

3. Metal flues or pipes of a single thickness, intended to convey heated air in any building hereafter to be altered or erected, shall have a thickness of not less than one inch of plaster of paris or other non-conducting material between them and any timber or wood-work adjoining the frame, or the pipe shall be doubled—that is, one inside another, at least one inch apart—and the space between them filled with non-conducting and non-combustible material, unless built in stone or brick walls.

4. Flues for boilers and smelting furnaces shall be built of brick or metal, of such size and height as may be determined on by the inspector of buildings.

5. No smoke-pipe, in any building having wooden or combustible floors or ceilings, shall enter any flue, unless it shall be at least twelve inches from either the floor or ceilings. Pipes passing through stud or wooden partitions shall be guarded by a double collar of metal, giving at least two inches of air space, having holes of ventilation, or other device equally secure, to be approved by the inspector of buildings. In any case where a furnace or boiler of any kind is used, the smoke-pipe must be placed at least two feet below beams or ceilings, unless said beams or ceilings are properly protected by shields or tin plates suspended above said smoke-pipe, with a sufficient space for the free circulation of air above and below said shield. The smoke-pipe shall in every case be at least eight inches from the beams or ceilings. The top of any furnace set in brick must be covered with brick, slate, or tin plate, supported by iron bars, and so constructed as to be perfectly tight; said covering to be in addition to, and not less than six inches from, the ordinary covering to the hot-air chamber. If there is not height enough to build a furnace top at least four inches below the floors, beams, or ceilings, the floor beams must be trimmed around the furnace, and the covering, trimmers, and headers, must be at least four inches from them. The top of any portable furnace not set in brick shall be at least one foot below the beams or ceilings, and shall have a shield of tin plate, made tight, suspended at least two inches below said beam or ceiling and extending one foot beyond the top of the furnace on all sides.

49 6. Hot-air registers hereafter placed in the floor of any building shall have air spaces extending all around their register boxes, guarded by tin on the outside.

SECTION 6.—*Openings in walls.*

1. Openings for doors and windows, except as otherwise herein provided, shall each have a good and sufficient arch of stone or brick, well built and keyed, with good and sufficient abutments, or lintels of stone or iron, and over wooden lintels, without regard to width, arches shall be turned. Over openings in which the lintel is less than the thickness of the wall to be supported there shall be good timber lintels on the inside of the other lintels, which shall rest at each end not more than four inches on any wall, and shall have arches turned over the timber lintels.

2. Openings of more than ten feet in width upon which walls rest shall be covered with iron beams or girders. Cut stone or hard brick arches may be turned over any opening over ten and less than thirty feet in width, provided they have skew-backs of cut stone or cast or wrought iron, with which two wrought-iron bars or tension-rods of sufficient strength shall be properly secured. In cases where the abutments of an arch are not of sufficient size to resist its thrust the rise of the arch shall be determined by the inspector of buildings. All lintels of stone fronts returned over a corner opening shall be of iron, of the full breadth of the wall to be supported, and shall be made safe as above detailed. Any support at the corner shall be of brick, cut stone or iron, and, if of iron, it shall be in the shape of a double column, that is, an outer and inner column. The inner column shall be of sufficient strength to sustain safely the whole weight, and the outer column shall be made of sufficient size to allow a space of at least one inch between it and the inner column, which shall be solidly filled with plaster of paris or other non-conducting material equally secure.

3. All floor timbers shall extend from wall to wall, except where brick partitions intervene, and ends of beams, rafters, and joists entering brick walls shall have a bearing of at least three and one-half inches therein, and shall be cut on a splay of three inches in their depth. Wells for stair or other openings shall be framed.

50 SECTION 7.—*Regulation of projections.*

1. Projections from the building line of any street or avenue eighty feet or more in width shall not exceed the following distances: Areas, eight feet on parked streets and six feet on unparked streets; show windows three feet, bay windows and tower projections, five (5) feet on parked streets and four (4) feet on unparked streets, steps, nine (9) feet on unparked street, twelve (12) feet on parked streets, unless otherwise determined by the inspector of buildings, when, in his opinion, the parking is not of sufficient width.

On streets less than eighty (80) feet in width, the projections shall not exceed four (4) feet; on streets less than seventy (70) feet in width, three (3) feet, and on streets less than fifty (50) feet in width, two (2) feet, and in no case shall projections of any kind, leave a clear width of sidewalk less than ten (10) feet, except by special permit. No fire-place or chimney shall be constructed in any projection outside of the building line, unless the shaft return to the building line and be carried upon iron beams.

Bay windows and tower projections shall not exceed fourteen (14) feet in

width, unless approved by the Engineer Commissioner, and on buildings twenty (20) feet and less in width, the building line front must be preserved by not less than three feet six inches. On buildings fifteen (15) feet and less in width, by not less than (2) two feet six (6) inches. On buildings over twenty (20) feet and under thirty-five (35) feet front, by not less than four (4) feet ten (10) inches, spaced as approved, by the inspector of buildings. But one projection will be allowed on a building thirty-five (35) feet and less in width. On larger fronts the projections shall not aggregate more than fifty per centum of the frontage of a principal or entrance front, and forty per centum of a side front exclusive of corner tower projections.

2. No projections except corner towers, show windows and areas shall be constructed on Pennsylvania avenue between Seventh street east and Rock Creek; Seventh street west its entire length; Ninth street west, between B street north and New York avenue; F street north, between Sixth and Fifteenth streets west; D street north, between Sixth
51 and Twelfth streets west. Colonnades may be constructed on Pennsylvania avenue, not to exceed six feet from the building line.

3. Porte-cocheres may be constructed in such manner as shall be determined by the inspector of buildings and approved by the Engineer Commissioner.

4. Carriage steps, when authorized, shall not exceed in dimensions three and one-half feet by twenty inches, nor eight inches in height, and in no case shall extend beyond the inner line of the curb.

5. Structures or projections above or outside of the roof, such as domes, cupolas, pavilions, towers, spires, pinnacles, buttresses, lanterns, louvres, lutheran or dormer windows, sky-lights, scuttles, ventilators, cornices, and gutters shall be made or covered with cast or wrought iron, tin, copper, zinc, other metal, or stone, slate, brick, cement or mortar, or other incombustible material.

6. Bay and oriel windows and tower projections may be constructed to brick or stone buildings with frame of wood, if covered with metal, slate, tile, or other incombustible material, when approved by the inspector of buildings.

7. No sign or advertisement of any sort shall be built, erected, or hung upon or from the roof or front of any building in the cities of Washington and Georgetown to project more than three feet six inches beyond the building line, nor shall any box, board, or other sign, or frame of any kind for a sign, be set up around or against any tree, lamp-post, or other post, pole, or other object, in said cities, and any sign now erected, or that may be erected, on the top of, or on the street front of, any building, or attached to any awning frame, or other structure attached to such building, shall be taken down and removed when rotten or unsafe.

8. Awning posts and frames shall be of iron. The posts shall be set in stone or iron blocks not less than six inches within the outer edge of the curb, and the frames must be firmly secured to the building, and in no case shall awnings now or hereafter erected interfere with street lamps or trees. On parked streets awnings may be used in front of business property to the outer edge of parking, but in no case to exceed the distance of fifteen feet from the building line. No part of the frame or canvass of an awning shall be at a less height than eight feet from the sidewalk.

52 SECTION 8.—*Construction of roofs and cornices.*

1. Every building or addition hereafter erected within the fire limits shall be roofed with non-combustible material. Every roof of combustible material which shall have become impaired to one-third of its original value shall be replaced by the owners with non-combustible material. And no combustible roof shall be repaired to more than one-half its surface. Each roof shall have a scuttle, not less than two by three feet, with a step-ladder or flight of steps leading thereto. No mansard or other roof shall be constructed more than one story in height nor more than twenty feet in height from the upper floor of the building upon which it is placed to the highest part of said roof, unless the same be constructed of fire-proof material throughout. Mansard roofs may be constructed without any additional thickness of walls and topped out with nine-inch walls.

2. Cornices or roof decorations on any building hereafter erected shall be made of non-combustible materials, to be approved by the inspector of buildings. All cornices shall be well secured to the walls with iron anchors, independent of any wood-work, and in all cases the walls shall be carried up to the planking of the roof, and where the cornice projects above the roof the wall shall be carried up to the top of the cornice; and all existing wooden cornices on buildings when replaced shall be constructed of some non-combustible material, as required for new buildings.

3. Buildings now or hereafter erected shall be kept provided with proper metalic down-spouts and eve or cornice gutters for conducting water from the roof to the ground, sewer, or street, in such manner as shall protect the walls and foundations from damage; and in no case shall the water from roofs be allowed to drain on or damage the adjoining property, nor shall it be allowed to flow upon the sidewalk, but shall be conducted by drain pipe or pipes to sewer, or to the gutter under sidewalk, where no sewer exists.

4. No permit for building shall be issued until a certificate of the inspector of plumbing shall have been presented showing that the regulations relating to plumbing, drainage, and water supply have been complied with.

53 SECTION 9.—*Construction of vaults and areas.*

1. Vaults shall be securely covered with substantial flagging or arched with hard brick. The crown of the arch shall be at least six inches below the established surface of the footway, and any openings in the top of the vault shall be at the inner edge of extreme wall and have a suitable covering placed thereon, to be kept securely closed when not in use. No grate or other fixture shall project above or be sunk below the established grade of the pavement, and the outer wall of the vault must be at least six feet within the inner line of the curb. When there is no interference with lamps, trees, or other public works, vaults may be built with the outer face of wall at the inner face of the curb, by special permit. No vault wall shall be placed within three feet of a lamp-post or four feet of a tree.

2. No vault shall be constructed so as to interfere with any sewer, water-pipe, man-hole, gas-pipe, tree, or other public work or improvement.

3. Areas must be protected by metal or stone railings at least forty-two inches in height, and when they extend the entire width of any lot frontage shall be protected by said railing with openings or gates four feet wide.

4. Proper protection, by metal or stone hand-rails, shall be provided where steps are built over areas, or where steps exceed four in number, and for all platforms where areas exist. Basement and cellar-steps shall be protected by railing like that required for areas, with four-feet openings or gates.

SECTION 10.—*Water-closets or privies.*

1. Every building shall be provided with at least one water-closet, or with an out-house for privy purposes where water is not accessible.

SECTION 11.—*Constructoin of wooden buildings.*

1. Wooden buildings may be erected outside of the fire limits, provided that on lands laid out in town lots no wooden buildings shall be erected or placed within twenty-four feet of any house built of brick or other incombustible material.

2. It shall be lawful for the owner or other party interested, after having obtained a permit from the inspector of buildings, to make neces-
54 sary repairs consistent with these regulations upon a wooden or frame building already built. A flat roof, covered with metal or other non-combustible material, may be substituted for a gravel or pitch roof. Wooden buildings, sheds, or shops, which are temporary in their construction and dilapidated beyond half their original value, shall not be repaired, but shall be considered as dangerous buildings, subject to the provisions of paragraph 7, section 2, of these regulations.

3. It shall not be lawful to erect, construct, enlarge, or remove any wooden building within the fire limits, but such may be permitted to be moved outside of the fire limits if not located in violation of any section of these regulations; and, for satisfactory reasons, permits approved by the Engineer Commissioner of the District may be given to move wooden buildings from one place to another within the fire limits; but in every such case a deposit shall be made, not to exceed two hundred dollars—the amount to be determined by the inspector of buildings—to secure public and private property from damage arising from such removal. The amount so deposited shall be returned to the depositor as soon as the inspector of buildings ascertains that no damage has been sustained; but if, in the opinion of the inspector, any damage has been done, it shall be made good out of the deposit, and the balance, if any, shall be returned to the owner.

4. No wooden building hereafter erected shall exceed the height of two stories and mansard roof or three stories to the square thereof.

5. No wooden building to be used for dwelling purposes shall be erected more than fifty feet long without the intervention of a brick partition wall at least nine inches in thickness, and said wall shall be carried at least six inches above the roof, whether said roof be flat or pitched.

6. No wooden building to be used for the purpose of any mechanical business or stable shall be built at a less distance than thirty feet from a

dwelling, and such building shall be subject in construction to such restrictions as the inspector of buildings shall designate in the permit.

7. All wooden buildings shall be built upon brick or stone foundations.

8. Temporary wooden sheds may be erected for use of builders, but only in front of or upon the lot on which the building is being
55 erected, and upon vacant adjoining lots with the consent of the owner thereof, and for storage or other purposes upon wharves, and for business purposes in coal, wood, lumber, stone and wagon yards, when approved by the Engineer Commissioner, in such manner as the inspector of buildings may direct, consistently with these regulations. A two-story frame back building, not exceeding ten feet by twelve feet, or one hundred and twenty square feet of ground area, may be built to a frame house. A story, not to exceed ten feet by twelve feet, or one hundred and twenty square feet, may be built on an existing one-story rear building or kitchen to a frame house, but in that case no other addition shall be made for a bath-house. A frame bath-room eight feet by eight feet or sixty-four square feet may be built to a brick house. Rooms may be added in the attic of a substantially good wooden building, with a steep or gable roof of sufficient height to form a story not less than eight feet in the clear. All extensions or enlargements mentioned or implied shall be constructed in such manner as the inspector of buildings shall approve. Enclosed sheds for fuel or water-closets or open sheds for wagon purposes, not to exceed eleven feet in height at the highest point thereof, and not to exceed twelve feet in depth and twenty feet in length, may be erected on the rear of lots, and if they are placed at a distance of thirty (30) feet or more from a dwelling-house they may be roofed with combustible material.

9. Any wooden building already constructed within the fire limits which may hereafter be damaged may be repaired at a cost not exceeding one-half its value, exclusive of the value of its foundation, provided the building was a good, sound one previous to said damage; but if the damage shall amount to more than one-half the value, then the building shall be taken down. The inspector of buildings shall determine the amount and extent of such damage.

10. Depositories for ashes shall be built of brick or other fire-proof material.

11. Within the fire limits it shall not be lawful to erect any wooden building for, nor to convert any existing wooden building to the uses of, a cow or hog yard, pen, or stable, or for dairy or other similar purposes. Nothing in this section shall apply where one cow only is kept for family use.

56 SECTION 12.—*Construction of stables.*

1. No livery stable shall be erected, nor shall any building already erected be converted to the uses of a livery stable, such building not having been lawfully used as a livery stable immediately preceding such conversion, within thirty feet of the building line of any street or avenue, nor within fifty feet of any dwelling-house; and no permit for any such building shall be issued until the applicant shall first exhibit a license, approved by the Commissioners of the District of Columbia, for the keeping of a livery stable on said premises. And it shall be the duty of the

proprietor or proprietors of a licensed livery stable within the cities of Washington and Georgetown to have the carriage-drive in front of said stable used for the purpose of entrance to it paved with brick on edge or other approved material. All stables where horses are kept for use in public carriages or wagons, omnibuses, street railways, or other conveyances, or for any purposes not strictly of a private character, shall be deemed to be "livery stables." Nothing in this section shall be construed to debar the erection of a stable for private or domestic purposes only, under such restrictions as the inspector of buildings may impose, with the approval of the Engineer Commissioner of the District.

2. No private stable shall be built within six (6) feet of the building line of any street or avenue, when the doors are intended to open on the street or avenue.

SECTION 13.—*Occupancy of public space.*

Persons engaged in the erection, alteration, or repair of any buildings may, for such reasonable period as the inspector of buildings shall decide, occupy public space with building material, as follows, viz:

1. Material will not be stored beyond eleven (11) feet exterior to the curb, or within (8) feet of railroad track, when practicable.

2. Where the width of carriageway of any street between curb and railroad track is less than sixteen (16) feet, the inspector of buildings may issue a special permit for the occupation of not more than eleven (11) feet from the curb nor less than three (3) feet from the track.

57 3. All material of whatsoever nature deposited outside the park line must be securely stacked so as to occupy no more than the needful area.

4. Not less than six (6) feet must be kept clear in the middle of sidewalks.

5. The dressing of materials on the streets and sidewalks is prohibited; but by special permit stone and brick or other material may be dressed within the park line, if suitably enclosed by a tight fencing. The dressing of old material will be under the direction of the inspector of buildings, and in general conformity with these regulations.

6. Mortar-beds may be placed upon the parking or roadway; if upon the roadway the distance from the curb shall be fixed by the inspector of buildings, but in no case to exceed eleven (11) feet from the curb. If upon a roadway of concrete, asphalt, or bituminous pavement, the bottoms must be of tight tongued and grooved boards, placed upon two (2) inch bearers or sleepers, leaving an air space, and protected on all sides by a margin of two (2) inch boards not less than six (6) inches high above the floor-surface.

7. Builders may occupy twenty (20) feet of the roadway fronting adjoining lots, when considered necessary and permitted by the inspector of buildings.

8. All materials to be placed and arranged as the inspector may direct and all materials and rubbish shall be removed by the contractor or owner of the property when so directed by the inspector of buildings. No gutter shall be obstructed except for temporary damming for collecting water for building purposes, when there are no available means therefor, under such conditions as the inspector of buildings may prescribe.

9. Builders or owners occupying the roadway shall exhibit a light at night placed in such manner as to warn the public that material is on the street and to distinctly show a clear passage left in road and footway, when the materials occupy twenty (20) feet or more along the street, two (2) lights, one at each end, shall be hung clear of the obstructions on the side of the carriage-way. Nothing in this section shall be construed so that free passage of carriages, wagons, carts, or other conveyances shall be obstructed or impeded.

10. No change shall be made in the limits or outline of any parking or terrace; nor shall any parking fence or terrace be moved,
58 constructed, altered, or modified except in accordance with plans presented to the inspector of buildings, and approved by the engineer Commissioner, and a permit issued therefor.

11. The division lines of street parking in front of lots facing circles or avenues shall be coincident with the party-lines of such lots.

12. No hitching-post, carriage-block, or other obstruction to the footway shall be erected, except upon a permit issued by the inspector of buildings.

SECTION 14.—*Machinery, warehouses, and shops.*

1. No foundry or furnace for melting or working glass, iron, or other metals; machine-shops for machinery to be driven by steam or other motive power; steam boilers or engines propelled by steam or other motive power, or any building therefor, shall hereafter be erected for use within the fire limits or any building be converted to such use, unless the written assent thereto of all the owners of property, not occupied in whole or in part for similar purposes, within ninety feet of the outline of the buildings to be erected therefor be first obtained; nor shall any such building be erected within thirty feet of any dwelling-house. All boiler-rooms hereafter constructed in any building under this section shall be constructed of brick and iron, and shall be so arranged that all openings between them and other parts of the building shall be closed by iron or metal-covered doors, which shall be securely closed at the close of each day.

2. Engines and boilers for driving machinery, for grinding coffee, spices, or for other similar purposes in stores, or for elevators in hotels, stores, and warehouses, where under ten (10) horse-power, or for heating purposes, may be permitted, under such restrictions as the inspector of buildings may direct in each case, upon the notice in writing by the owner or agent intending to set up such boiler or engine to the inspector of buildings, fully describing said boiler or engine and the use for which it is intended, but not until a special permit shall have been obtained.

3. No building to be used as a saw or grist mill, blacksmith or white-smith shop, or shop for the working of wood or other combustible material, rag warehouse, or shop or building for the storage of materials of
59 an inflammable nature, shall be erected within thirty feet of any dwelling, nor shall any building be converted to such uses within thirty feet of any dwelling-house.

4. The lessee, owner, or occupant of any warehouse, store, manufactory, or other building in which there are hoistways or other openings besides the usual stairways, shall cause the same to be securely protected by railing, or such other appliances as may be deemed necessary by the inspector of buildings.

SECTION 15.—*Coal and lumber yards.*

1. No person or persons shall establish any coal or wood yard, lumber-yard, or yard for the storage or sale of coal, lumber, or wood, or yard for the storage or sale of any new or second-hand combustible material, upon any new site, or site not used for such purposes for the period of one year previously, within fifty feet of any building on either side of premises intended for any of the uses above named, unless the person or persons desiring to establish or locate any such premises shall first file with the inspector of buildings the written consent of all the owners of improved real estate within fifty feet of the ground which is contemplated to be occupied; in which case the question shall be submitted in writing by the inspector of buildings to the Commissioners of the District for decision.

2. The regulation relating to coal or wood yard shall be so construed as to except from its provisions cases where parties have upon their premises for sale, in small quantities by retail, not exceeding three (3) tons of coal and one (1) cord of wood sawed and split.

SECTION 16.—*Brick-yards and offensive establishments.*

1. No person or persons shall establish, erect, construct, or lay off within the building limits any brick-yard, brick-kiln, or pottery furnace, or any slaughter-house, soap or candle manufactory, bone-boiling or other establishment whereby offensive odors are generated to the detriment or injury of the neighborhood, upon any site not used as aforesaid during twelve months immediately preceding, nor shall any such establishment now existing be extended to within one hundred and fifty yards of any dwelling-house occupied or used, unless the person or persons desiring to conduct or extend any of the above enumerated establishments shall first file with the inspector of buildings the written consent of all the property owners and occupants within two hundred and fifty yards of such establishment, and shall have received a permit therefor.

SECTION 17.—*Blank forms.*

1. All blank forms of permits, applications, certificates, and notices, required by these regulations, shall be prepared under the supervision of the Commissioners of the District.

2. Applications for any permit or certificate prescribed in these regulations must be made on an appropriate blank prepared as hereinbefore required, and obtained from the office of the inspector of buildings.

SECTION 18.—*Fees.*

1. The fees under these regulations shall be as follows: For each permit for a new building or other structure, two dollars for each building; for each permit for alteration or repair, one dollar for each building or structure; for each permit for vault, three cents per cubic foot of proposed vault; for each permit for area in front of the building line of any building now erected, or any structure or building hereafter erected, after the same shall have been completed, one dollar for each area; for all other permits and certificates, one dollar each; for measuring, under section 4,

in the matter of party walls, the fee shall not exceed five dollars, except in cases of express agreement; and for examination of dangerous buildings, defective escape facilities, or other defective or insufficient arrangements or appliances in public assembly rooms, on appeal, the fee shall be prescribed as in section 2.

SECTION 19.—*Places of public assembly.*

1. All buildings of a public character, already erected or hereafter built, such as halls, churches, and places of amusement and instruction, the doors shall open outwards and remain open when the building is occupied, except fly-doors, opening both ways, which may be kept closed. The hall-doors, stair-ways, seats, and aisles shall be so arranged as to facilitate egress in cases of fire or accident; and to afford the requisite and proper accommodation for the public protection in such cases, all aisles and passage-ways in such building shall be kept free from camp-stools, chairs,
61 sofas, and other obstructions during any service, exhibition, lecture, performance, concert, ball, or any public assemblage.

2. In all theatres and public places of amusement there shall be kept, attached to a plug or water attachment, to be furnished by the owners or lessees for that purpose, sufficient hose, of the size used by the fire department, to extend to the furthest limits of said place of amusement, and said hose shall be kept at all times in good order and repair and ready for immediate use.

3. When application is made for a permit to construct or reconstruct edifices of the character referred to in this section, except churches and places of instruction, there shall be filed therewith, in the office of the inspector of buildings, a written permission of a majority of the residents and owners of property in the square in which said building is proposed to be located, and of the confronting side of the opposite square which fronts such building, and a license for the particular establishment, designed for the purpose, indicated in paragraph one (1) of this section, shall first be procured and submitted to accompany the application.

SECTION 20.—*Penalties.*

1. If any person or persons, either as principal, agent, or employee, shall violate any provision of these building regulations, or of any regulation hereafter adopted in amendment of or in addition thereto, for the violation of which no other penalties are therein provided, such person or persons shall forfeit and pay not less than ten nor more than one thousand dollars for each and every such violation. All penalties under these regulations shall be recovered by the Commissioners of the District of Columbia, under information filed in the name of said District in the police court of said District, as fines are recovered for the violation of municipal ordinances.

2. If any person, after being fined in the police court for the violation of any provision of these regulations, shall persist in the same violation, such person shall forfeit and pay the further sum of one hundred dollars for each and every week that he or she shall so persist, except in the case of maintaining a dangerous structure, when he or she shall forfeit and pay

said further sum of one hundred dollars for each and every day that he or she shall maintain said structure after conviction in the police court.

62 3. In addition to the proceeding before the police court by information, the supreme court of the District of Columbia, or any justice thereof, either in term time or vacation, shall exercise equity powers for the enforcement of these regulations, and particularly for the removal, within a time fixed by the court or the acting justice, of any building or structure, the filling up of any vault or area, and the abatement of any nuisance of which complaint shall be made as a violation of these regulations or any part thereof.

SECTION 21.—*Repealing clause.*

1. All building regulations and parts of building regulations heretofore made, which are inconsistent with these regulations, are hereby repealed.

63 *Separate answer of A. A. Cole, defendant—Filed Nov.* 26, 1888.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* ANNIE A. COLE ET AL., DEFENDANTS. } In equity. No. 11451.

The separate answer of Annie A. Cole, a defendant, to the bill of complaint.

This defendant, saving to herself the benefit of objections hereinafter made to the bill, as if she had made them grounds of demurrer, answering for herself only, says:

1. She admits the truth of the averments of the first paragraph, subject to the qualifications hereinafter set forth.

2. She admits the truth of the second paragraph.

3. She admits that she owns and possesses, as alleged, the property described and that the description of it in paragraph 3 of the bill is substantially accurate, and she *says* that, besides owning the fee-simple of the triangular parcel included between the building lines indicated

64 in figure 1, of exhibit 1, she has, as owner, by usage, by statutes of the United States, and of the legislative assembly of the District of Columbia, and by the building regulations of said District, established, in pursuance of an act of Congress, certain rights of building on the parking contiguous to said parcel, and which parking is correctly delineated on figure 1, of exhibit 1, filed by plaintiff.

She says further, that the building regulations, No. 2, of Washington City were made by the commissioners of said city and approved by George Washington, President of the United States, on the 7th of July, 1794; that they have always been recognized by the courts and municipal authorities as having the force of a statute of that date; that said regulations authorized, permitted, and allowed owners of Washington City lots to occupy for certain building purposes seven feet of the streets contiguous thereto; that the easement thus granted has been subsequently by law restricted in some particulars, extended in others and regulated,

but has never been revoked, and has received recognition in sundry
65 ordinances of said city passed between 1820 and 1871, and has been in substance enjoyed by said owners without interruption since 1794; that under the established usage of ninety-four years a very large number, probably the majority, of the dwelling-houses in said city have been built with areas, vaults, steps, porches, colonnades, palisades, or tower projections, which extend beyond the exterior lines of the numbered lots on which the main part of said houses is built; and she submits that the law of the United States of June 14, 1878, directing said District Commissioners to make and enforce such building regulations for said District as they might deem advisable and giving to the regulations so made the same force and effect "as if enacted by Congress" was enacted with full knowledge of the aforesaid usage and is confirmatory thereof. She says further, that the projection complained of in the bill is in strict conformity with usage, the existing building regulations, and the permit issued and delivered to her by the District Commissioners.

4. She admits that the position of her dwelling-house on said
66 parcel is represented with substantial accuracy in figure 1, of said Exhibit 1; and says that the eastern end of said parcel with the alleged dimensions, was not occupied by any building before she began to erect the addition complained of in the bill.

5. She admits the truth of the averments in paragraph 5 of the bill, except the one stating in effect, that the part of the walls, exterior to the street boundary lines is "entirely upon the land of these complainants," which averment she denies, unless qualified by the foregoing and following facts: By the building regulations, No. 2 of July 17, 1794, of Washington City, the ordinance of May 26, 1845, and sundry other ordinances of the corporation of said city, passed in pursuance of power conferred in the charter of 1820, and amendments thereto, and by the act of Congress of June 14, 1878, projections of buildings over the boundaries of lots, and into the streets of said city were made lawful and were subject to the exclusive regulation of the municipal government of said city. She says, that no part of the structure complained of is upon the part of the said avenue and street used for public travel, but is wholly upon her
67 own lot, and the parking contiguous thereto. She admits that the foundation walls are clearly indicated in figure 2, of Exhibit 1.

6. She admits the truth of the averments in the first part of the sixth paragraph of the bill, but says that in addition to the authority of the permit mentioned issued to her with the approval of each one of the three District Commissioners, she has all the rights of a property owner to build in conformity with usage and law. She denies that it is her intention to use the addition as an independent dwelling-house separate and distinct from the main building, and says that in its design and construction it is part of the main building, and in each story opens by a door into said main building; that while she reserves to herself her right to manage her property in the future according to her own judgment, her present wish and intention are to rent or lease the house with its addition to a single tenant.

7. She denies the proposition contained in the seventh paragraph of the bill, and says that in granting her the said permit, the District
68 Commissioners have exercised an authority given them by laws of the United States, and which can not be properly questioned by

any other official of the United States; and that the bill of complaint in this case has been filed without authority of law. She further says that the authority vested by the law in the District Commissioners, to make and enforce building regulations is municipal in its nature and exclusive.

8. She denies each and all of the averments in the eighth paragraph contained, and says that the contemplated erection does not encroach upon the part of the adjacent streets which is used by the public, will not obstruct travel or offend good taste; and that far from being a "grievous public nuisance," it will be an architectural ornament to the city.

She denies that the plaintiff is without remedy at law, and says she is advised and believes that such remedy is full and adequate. She further says she is advised, believes, and charges, that the defendant, Entwisle, is not a proper party defendant to the bill; and that she and the
69 District Commissioners are not properly joined as defendants.

And now, having fully answered all the material averments in said bill of complaint, this defendant asks to be hence dismissed with her costs in this behalf most unjustly incurred.

ANNIE A. COLE.

DISTRICT OF COLUMBIA, *ss*:

Annie A. Cole, being duly sworn, says that she has read the foregoing answer; that all the statements therein made of her own knowledge are true, and all the statements made therein on information and belief she believes to be true.

ANNIE A. COLE.

Sworn to and subscribed before me this, the 22d day of November, 1888.

R. J. MEIGS, *Clerk*.
By L. P. WILLIAMS, *Ass't Clk*.

70 *Affidavit in support of answer—Filed Nov.* 26, 1888.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA
vs.
ANNIE E. COLE ET AL. } In equity. No. 11451.

Annie A. Cole, being duly sworn in the above cause, deposes and says: I am one of the defendants in the above case; I began the erection of the addition complained of in the bill, about the middle of September last, but owing to interruptions of the work caused by the suspension of the permit and other things, the building has progressed no further than to the third story. If the work should be stopped now, the resulting inconvenience and loss to me would be very great; besides the damage to the walls from rain and frost, my main dwelling-house would be left exposed to the weather at the east end, where the wall and roof have been partly removed, and it would be in no condition for renting or leasing. I should lose the

entire income from it for the winter. I have heretofore rented it furnished for five hundred dollars a month, and at another time for three thousand and five hundred dollars a year for six years, and if the addition were
71 completed I could probably rent it for a larger sum. The loss to me from an injunction in this case would probably be several thousand dollars.

ANNIE A. COLE.

Subscribed and sworn before me Nov. 22, '88.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, Jr., *Ass't Clk.*

72 *Affidavit in support of answer—Filed Nov.* 26, 1888.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA
vs.
ANNIE E. COLE AND OTHERS. } In equity. No. 11451.

Charles W. Morris, being duly sworn in the above cause, deposes and says: I am by occupation a builder and contractor and have been so for many years in this city. I am superintending for Mrs. Annie A. Cole the erection of the addition to her dwelling-house at the intersection of M and Massachusetts avenue in this city. The basement, parlor story, and second story are already built, and we are ready to go on with the third and last story. The suspension of the work at its present stage would result in great loss to the owner. In order to make the addition, about fourteen or fifteen feet of the east wall of Mrs. Cole's dwelling-house have been removed, and though the opening is partly filled by a chimney in the lower stories it is not filled in the attic story. The opening runs up to the roof of the dwelling-house, and if the work is now
73 suspended the dwelling-house will be left exposed partially in the basement and two lower stories and greatly in the third story and in the attic story to the weather. A temporary protection would be difficult, expensive, and inadequate to secure comfort to occupants of the dwelling-house, which would be made extremely uncomfortable, if not untenantable during the winter weather.

If left in its present condition the walls of the addition would be greatly injured by the frost and rains of the winter. It would be necessary also to remove the materials from the street and incur considerable expense for the protection of the walls. The best and cheapest method of protection is to finish the third story, put on the roof, and put in the windows.

CHARLES W. MORRIS.

Sworn to and subscribed before me this the 22d day of November, 1888.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

74 *Order denying injunction—Filed Nov.* 28, 1888.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA
vs.
ANNIE E. COLE AND OTHERS. } In equity No. 11451.

The motion in this case by plaintiff for an injunction pendente lite coming on to be heard, and being argued by counsel on both sides and considered by the court, said motion is overruled and said injunction refused by order of the court, this the 28th of November, 1888.

WM. W. MERRICK, *A. J.*

Order to calendar for hearing—Ordered Dec. 3, 1888.

DECEMBER 3RD, 1888.

The clerk will please set this case down for hearing on bill and answer.

(Signed.) JOHN BLAIR HOGE,
RANDOLPH COYLE,
Solicitors for Complainant.

Calendared as ordered, 1888, Dec. 3.

BY THE CLERK.

75 *Stipulation of counsel, etc.—Filed Jan.* 30, 1889.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA, COMPL'TS,
vs.
ANNIE E. COLE ET AL., DEF'TS. } Equity No. 11451.

It is hereby stipulated and agreed by and between the solicitors for the respective parties hereto that this case may be by the justice holding the equity court ordered to the general term for hearing in the first instance.

JNO. BLAIR HOGE,
Attorney for the United States in and for the District of Columbia, Sol'r for Compl'ts.
BIRNEY & BIRNEY,
Attorneys for Defendant, Annie A. Cole.

Hearing in gen. term ordered Jan'y 30, 1889.

JANUARY 30, 1889.

I certify the above-named cause to be heard in the general term in the first instance.

W. S. COX, *J.*

76 *Suggestion of U. S. attorney as to change of parties—Filed Oct. 10, 1888.*

In the supreme court of the District of Columbia, holding a general term.

THE UNITED STATES OF AMERICA, complainants, *vs.* ANNIE E. COLE ET AL., DEFENDANT. } Equity No. 11451.

And now comes John Blair Hoge, attorney of the United States in and for the District of Columbia, solicitor for complainants, and suggests to the court that, since the filing of the bill of complainant and of the answers of the several defendants herein, the commissions of the defendant' William B. Webb and Samuel E. Wheatley, respectively, as Commissioners of the District of Columbia, have expired by operation of law, and said Webb, and Wheatley are not now such Commissioners, nor have they been since the 21st day of May, A. D. 1889, on which said day, in pursuance of commissions theretofore issued by the President of the United States,
77 one John W. Douglass and one Lemon G. Hine duly qualified as such Commissioners (in place of said Webb and said Wheatley), and have ever since said day filled and now fill said office of Commissioners of the District of Columbia; wherefore, inasmuch as said Webb and said Wheatley were made parties defendant herein solely by reason of their said office, so as aforesaid lately filled by them, the said solicitor for complainants suggests that this suit do abate as to said Webb and Wheatley and that said John W. Douglass and said Lemon G. Hine be made parties defendant herein in the place and stead of said Webb and said Wheatley.

JNO. BLAIR HOGE,
Attorney of the United States in and for the District of Columbia,
Solicitor for Complainants.

78 *Order substituting parties—Filed Oct. 10, 1889.*

In the supreme court of the District of Columbia, holding a general term.

THE UNITED STATES OF AMERICA, complainants, *vs.* ANNIE E. COLE ET AL., DEFENDANTS. } Equity No. 11451.

Upon consideration of the suggestion this day filed by the solicitor for the complainants, and the solicitors for all the defendants assenting thereto, it is by the court this 10th day of October, A. D. 1889, ordered that this suit be, and the same is hereby, abated as to the defendants William B. Webb and Samuel E. Wheatley, late Commissioners of the District of Columbia, and that John W. Douglass and Lemon G. Hine, the successors in office of said Webb and Wheatley as Commissioners as aforesaid, be, and

they are hereby, made parties defendant herein, in the place and stead of said Webb and Wheatley; the answers heretofore filed herein by
79 said Webb and Wheatley to stand and be treated as though the same had been filed by the said Douglass and Hine and in their respective names.

E. F. BINGHAM, *C. J.*

We consent to the entry of the above order.

JNO. BLAIR HOGE,
Attorney of the United States for the District of Columbia,
Solicitor for Complainants.
WILLIAM BIRNEY,
By a. a. r.,
Solicitor for defendant Cole.
A. RIDDLE,
Solicitor for defendants Webb, Wheatley, and Entwistle.

80 *Opinion of the court—Filed Feb'y* 28, 1890.

(Bingham, C. J., James and Montgomery, JJ., sitting) by James, associate justice.

The authority of the Commissioners of the District of Columbia to make building regulations considered. Their regulations as to bay windows and tower projections construed. The right of the United States by bill in equity to enforce the abatement of public nuisances and purprestures upon their lands affirmed. The status and future of the city of Washington as a national city considered.

Argued October 17th, 18th, 19th, 1889.

John Blair Hoge, U. S. attorney, D. C. Randolph Coyle, asst. U. S. attorney, D. C., for plaintiffs.

William Birney, Martin F. Morris, for defendant Cole.

Albert G. Riddle, att'y of D. C., for defendants, the Commissioners of the District of Columbia and the inspector of buildings.

81 Supreme court of the District of Columbia, in general term.

THE UNITED STATES
vs.
ANNIE A. COLE AND OTHERS.
} Equity. No. 11457.

Mr. Justice James delivered the opinion of the court, as follows:

The United States brings this suit as owner of the streets of Washington. The bill alleges that the defendant Cole, a married woman, claims to own in her own right and is in possesson of lot one in the subdivision, by the heirs of John Davidson, of square 213, fronting 126.38 feet on M street north, 115.50 feet on Massachusetts avenue, having a westerly boundary line of 51.30 feet, and running to a point at its eastern end, as shown by an exhibit filed therewith; that a part of said holding has for many years been improved by a brick dwelling, while the eastern part—that is to say, the part running to a point—fronting 55.68 feet on M street,

and 52.8 feet on Massachusetts avenue, has been vacant; that on September 17, 1888, the owner commenced building foundation walls for a brick structure on the vacant part of said lot, placing them partly coincident with and partly exterior to the outer lines thereof, as shown by the exhibit referred to; that at the time of the filing of this bill (10 October, 1889) she had built up the said walls to a height of ten feet above the
82 ground, and purposed carrying them to the height of three full stories and a basement, and that, so far as these walls lie outside of the lines of her holding, they are entirely on complainant's land.

It is further alleged that the defendant Cole is acting in the premises under the pretended authority of a so-called permit, issued by the defendant Entwistle as "inspector of buildings," with the consent, authority, and approval of the District Commissioners, and that although the building in course of erection is designated in the permit as an addition to the building standing on the other part of the lot, it is designed and intended to be used as a separate and independent dwelling house. It is charged that the permit is insufficient in law to authorize the erection of said building, and is void so far as it pretends to authorize the erection of walls exterior to the lines of the defendant Cole's individual holding; that the erection contemplated would involve an invasion of complainant's property and would constitute a public nuisance. The prayer is that she be enjoined from further proceeding with the erection of the building, and required to remove such parts already erected as lie outside the building line.

The answer of defendant Cole sets up that no part of the structure complained of is upon that part of the street or avenue named which is used for public travel, but that the whole of it is only upon her own lot and the contiguous parking; denies that it is upon any part of the street used by the public or that it will obstruct travel or offend good taste, and claims that it will be an architectural ornament rather than a public nuisance.

The joint and several answers of the Commissioners of the District and the inspector of buildings set out the history of the authority to make building regulations, and state that in pursuance of the authority given by the act of Congress of 21 February, 1871, the board of public works,
83 with the approval of the legislative assembly, adopted a general plan for the improvement of the streets and avenues, and, as a part of said plan, caused a space 18 feet wide to be parked next adjoining the building line on M street, and a space of 40 feet wide to be parked on Massachusetts avenue next adjoining the building line, adjacent to defendant Cole's property and encircling the eastern apex thereof; that this parking has ever since remained and is inclosed by a suitable fence; that outside of it there is a foot-way 12 feet wide on M street, and 15 feet wide on Massachusetts avenue, and that M street is 90 feet, and Massachusetts avenue 160 feet wide where said Cole's property borders thereon. The answer further sets out, by exhibit, the building regulations made by the Commissioners under authority of the Act of Congress of June 14, 1878. (20 Stats., 131.)

It appears by the exhibits that Mrs. Cole's original application was for a "permit" to build "a three-story and basement brick *addition*, 24 feet by 46 feet, including a projection 5 feet by 44½ feet on Massachusetts ave-

nue, and one on M street 5 feet by 48 feet," according to a plan submitted; but that afterwards a different plan was submitted to and approved by the Commissioners, and permit was issued accordingly; by which two projections on Massachusetts avenue and two on M street—one on either side of an entrance from those streets, respectively—were provided for. The projection on the west side of the entrance from Massachusetts avenue was to be five feet from the building line and sixteen and a half feet wide; and that on the east side was to be of the same depth and twenty-six and a half feet wide. On M street the projection west of the entrance was to be five feet deep by sixteen feet wide, and that on the east side was to be of the same depth and twenty-nine feet wide. According to the exhibit of plan the projections on Massachusetts avenue and M street, east of the entrance referred to, touched the building line only at their western ends.
84 From those points they extended eastward without returning to the building line, and encircled the apex of Mrs. Cole's lot, thus connecting the projection on Massachusetts avenue with that on M street. The actual foundations and walls referred to in the bill were constructed on that plan.

These facts raise the question whether the building of these projections into the parking is lawful, and the manner of considering it is fairly stated in two averments of the bill and answer. The bill alleges "that the permit is insufficient in law to authorize the erection of said building, and, so far as it pretends to authorize the erection of walls exterior to the lines of defendant Cole's individual holding, is null and void." The answer of the Commissioners alleges: "that the building regulations are in law and equity a complete authority for the structure now building."

It is unnecessary for us to consider again the power of the Commissioners to make building regulations. As Mr. Justice Hagner said, speaking for the court in U. S., *ex rel.* Strasburger *vs.* The Commissioners, 5 Mack., 389 (393): "The act of June 14, 1878, seems to have been designed to confer upon the Commissioners a power with respect to building regulations of the most comprehensive character. It authorizes and directs the Commissioners 'to make and enforce' 'such building regulations for the said District as they may deem advisable;' and it declares that 'such rules and regulations made as above shall have the same force and effect within the District of Columbia as if enacted by Congress.' There is no limitation to the character and extent of the regulations thus authorized, but the terms are broad enough to include every form of building regulations that the Commissioners may deem advisable and which may reasonably be considered as a proper subject of regulation."

But it is to be remembered that the streets and avenues of Washington are the property of the United States (Van Ness *vs.* The Mayor,
85 &c., of Washington, 4 Peters, 232); and as it may be said that authority to subject to private and individual use lands belonging to the United States is a substantive power, and therefore is not included, as an incident, in even the most unrestricted power to make regulations *about buildings* on individual holdings, it is necessary to consider whether this substantive power has also been granted, either expressly or by implication.

As a rule of construction, it must be assumed that, in granting to the

Commissioners power to make building regulations, Congress has had in mind and acted with reference to what has already been done under the name of making building regulations; and we find that "Building Regulation No. 2," published by President Washington, July 7, 1794, authorized areas 7 feet in breadth in the streets immediately adjacent to buildings; that under the amendment to the charter of the city of Washington, passed 15 May, 1820, authorizing the corporation "to regulate, with the approbation of the President of the United States, the manner of erecting and the materials to be used in the erection of houses," an ordinance was passed on the 30th of March, 1822, authorizing the construction by property owners of vaults under sidewalks, and of areas, steps, cellar-doors, and colonades or open arches; all of them to project, within variable specified limits, beyond the building lines of private holdings; and finally we find that on the 16th January, 1871, the city council of Washington authorized the projections specifically known as bay windows. In view of such previous exercise of power to authorize, under the head of regulation of buildings, the occupation of streets by permanent projections, it can not be doubted that the authority vested in the Commissioners in 1878 to make building regulations carried with it power to provide for the occupation of the streets by such permanent projections as bay windows; notwithstanding such power over the property of the United States was substantive, and not incident to the power to make regulations about
86 buildings erected on private holdings. We must, therefore, hold the building regulations existing when this permit was granted to have the same effect, until regularly altered by the Commissioners, as if they had been enacted by Congress.

What building regulations, then, apply to the structure in question? We are referred by both parties to section 7 of the regulations, which contains the following provisions: "Projections from the building line of any street or avenue eighty feet or more in width shall not exceed the following distances: Areas eighty feet on parked streets and six feet on unparked streets; show windows three feet, bay windows and tower projections five feet on parked streets and four feet on unparked streets; steps nine feet on unparked streets, twelve feet on parked streets, unless otherwise determined by the inspector of buildings, when in his opinion the parking is not of sufficient width. * * * No fireplace or chimney shall be constructed in any projection outside of the building line, unless the shaft return to the building line and be carried upon iron beams.

"Bay windows and tower projections shall not exceed fourteen feet in width, unless approved by the Engineer Commissioner; and on a building twenty feet or less in width, the building line front must be preserved by not less than three feet six inches. On buildings fifteen feet and less in width, by not less than two feet six inches; on buildings over twenty feet and under thirty-five feet front, by not less than four feet ten inches; spaced as approved by the inspector of buildings. But one projection will be allowed on a building thirty-five feet and less in width. On larger fronts the projections shall not aggregate more than fifty per centum of the frontage of a principal or entrance front, and forty per centum of a side front, exclusive of corner tower projections."

We were also referred at the argument to section one of the regulations,

for the following definitions, as showing the meaning of the foregoing provisions:

87 "Building line.—The line of demarcation between the public and private space."

"Bay windows.—A first-floor projection for a window, other than a tower projection or show window."

"Oriel window.—A projection for a window above the first floor."

"Tower projection.—A projection designed for an ornamental door entrance, for ornamental windows, or for buttresses."

It was assumed on both sides at the argument that the projections in question, whether they conformed to the regulations or not, must belong to the categories of either bay windows or tower projections; and we do not find anywhere in the building regulations any other class of projections to to which they could belong. The question, then, is whether they conform to the regulations concerning these particular subjects. In determining this question it is proper to interpret, in the first place, the meaning of the definitions referred to. We think that when they define a bay window to be "a first-floor projection" and an oriel window to be "a projection for a window above the first floor," it must be understood that a bay window does not include and perform the office of an oriel window; in other words, that a bay window is strictly a projection one story high. The definition of tower projection, on the other hand, does not speak of the stories from which it may project; but the word "tower," and the fact that the definition prescribes no limitation, indicate that such a projection, beginning at the foundation, includes several stories. When this bill was filed the walls had been built only about ten feet high, and did not include the whole of even the first story; but the permit was for projections which should include a basement and three stories. It purported, therefore, to authorize the construction of tower projections. This distinction is only important for the sake of clearness, inasmuch as the rule of projection and

88 width is not varied by it. The rule as to those dimensions applies to bay windows and tower projections alike.

To proceed, then, with tower projections. We find that the regulations describe all projections, of whatever kind, as "projections from the building line of a street or avenue." In other words, they authorize projections where there is such a building line, and do not authorize projections from something which can not be considered a building line, thus making a building line the basis and condition of the privilege. In this case, for example, they authorize projections from the building line of Massachusetts avenue and the building line of M street; but the apex of Mrs. Cole's lot, where these building lines are interrupted, is not itself in any sense a building line, and these regulations do not authorize any projection from and in front of that apex. It is clear, we think, that what Congress intended to empower the commissioners to license, and what, accordingly, the regulations propose to license, is the enjoyment, by a private holder, of certain privileges in front of his holding. Whether there was any reason of public interest for not extending these privileges into the space beyond the point at which the building lines terminated in an apex we need not decide; we simply hold that when all projections must be from a building line, this apex can not be treated as if it were a third building line and made the basis or point for a projection toward Thomas Circle.

On referring to the exhibit showing the plan submitted to and approved by the Commissioners, we find an apparent attempt to meet the objection that this apex was not itself a base for a projection. The figures and red lines indicating the length of the projections on Massachusetts and M street, respectively, evidently include the projection beyond the apex as a part of those projections, showing the former to be 26 feet 6 inches and the latter to be 29 feet. And on referring to the application for a permit to build, we find that it describes the proposed projections
89 as "two projections on Massachusetts avenue, 16 feet 6 inches and 26 feet 6 inches wide and two on M street, 16 and 29 feet wide;" showing conclusively that the plan includes the projection beyond and east of the apex as part of the projections on the streets. It is hardly necessary to say that, as projections on those streets, such extensions 5 feet beyond the point at which the Massachusetts avenue and M street fronts of Mrs. Cole's lot terminate are not authorized by the regulations.

After end of 9th line on page 9 insert the following, viz:

It was claimed at the argument that this projection, beyond the apex of Mrs. Cole's lot, was substantially a "corner tower," and is, as such, authorized by the regulations. The manner of constructing and placing such towers is not separately and specifically stated in those regulations, but it is clear that in one respect they must conform to the general rule concerning all projections from the building line—that is to say, a "corner tower" must proceed from and touch the two building lines forming the corner. The structure in question does not pretend to conform to this requirement. It is certainly not a "corner tower" within the meaning of the building regulations. Had this part of the building been actually constructed according to the regulations, and rested against the building lines fronting on Massachusetts avenue and M street, respectively, it would have been useless, since these two lines approached at that point so closely as to leave an insufficient access to the tower. For that reason, it may be supposed, the rule was disregarded, and the Massachusetts avenue and M street projections were connected without reference to any building line, and by a structure which is not a "corner tower."

It may be added that we learn from a plat showing the projections from buildings on other similar points around the same circle—which, if not made an exhibit, was drawn in the office of the District engineer and was agreed by both parties at the argument to be correct—that the construction of the regulations which we have just announced must have been adopted by the Commissioners in former cases. What appear to be corner-towers of Mrs. Dahlgreen's house, at the opposite and corresponding apex, formed by the intersection of the building lines of Massachusetts avenue and M street, and of the Portland Flats, at the intersection of the building lines

of Vermont avenue and Fourteenth street, are projections from the building lines of these avenues and streets, respectively, and do not encircle or extend beyond these apexes.

It is true that the structures referred to were erected under the regulations of 1882, but those regulations no more permitted this extension beyond the apex than the present rules do. We are, therefore, of opinion that in any aspect a projection beyond the apex of Mrs. Cole's lot is unauthorized by the building regulations.

We observe, in the next place, that the projections on Massachusetts avenue are (if we omit the projection of five feet beyond the apex), sixteen feet six inches and twenty-one feet six inches; and on M street, sixteen feet six inches and twenty-four feet. It is claimed by the defendants
90 that a permit for projections having such width was authorized by the following clause of the regulations: "Bay windows and tower projections shall not exceed fourteen feet in width, unless approved by the Engineer Commissioner." Substantially, this is a provision that the Engineer Commissioner may, in each case and independently of all others, authorize any dimension over fourteen feet that he may think fit. It seems to have been imagined by the Commissioners that by making a rule that the Engineer Commissioner might act at his discretion in this matter, in other words, without rule, they had satisfied the requirement of the statute that they should make rules about the same matter. To call this a rule about bay-windows and tower projections is an abuse of words. It is merely a rule about the powers of the Engineer Commissioner, and as such it is illegal and inoperative. It would have been equally so had the same power been reserved to the Commissioners themselves; in other words, to the very persons who were charged with the making of rules and regulations. The power given to them by Congress was power to make rules; not power to provide that they would decide each case independently and without rule. There may be matters as to which it is competent for the Commissioners to reserve or to delegate to others discretionary powers; but this is not one of them. From the time of President Washington's regulations down to the time when this power was vested in the District Commissioners, the appropriation of the public spaces for any kind of projections from private holdings has always been the subject of fixed and general rules; and it is a necessary conclusion the Congress intended that it should stand on that footing. As we have already suggested, this is not in its nature an incident, but a substantive power. It must be used in the very manner indicated—that is to say, by making general rules.

A case relating to this point was well considered and decided by the supreme court of Pennsylvania, in Reimer's appeal, 100 Penna. St.,
91 182. An act of the Pennsylvania legislature had empowered the city councils of Philadelphia "to make and establish rules and regulations for the better regulation of jut or bay windows." The councils, without establishing any general or fixed rules, undertook, by ordinance, to grant a special permit to one Reimer to construct such a window, projecting at a point many feet above the sidewalk from the front of his private dwelling. The Commonwealth, by its attorney-general, filed an information in the nature of a bill in equity to restrain the defendant Reimer from maintaining the obstruction, which was alleged to constitute a nuisance. In an opinion, adopted with the strongest commendation by the

supreme court of the State, the presiding judge of the court of common pleas of Philadelphia County thus disposed of the ordinance which was set up as a defense:

"The power to make rules and regulations which shall confer a general and common right in which all shall equally participate does not authorize the granting to one and the withholding from another a permission to construct jut or bay-windows according to the caprice or will of councils. * * If each case is to be individually acted upon and does not depend upon its conformity to a general rule, this would be the result not only in regard to bay-windows, but for every other purpose for which it would be desirable to occupy the highway. This is characterized as special legislation on subjects of general interest and concern, forming no rule or regulation for all alike, but giving invidious privileges to the favored few at the expense of the many, which is contrary to the whole spirit and intent of the authority entrusted to the councils by this law."

The principle of this case rests upon the broadest considerations, and if it was important to restrict by it the action of a representative and legislative body it would seem still more important that it should be applied to the exercise of powers by officers who are neither of these.

92 Since, then, this pretended grant of discretionary power to the Engineer Commissioner is unauthorized and inoperative, and since the Commissioners themselves can only provide by general rules for the width of bay windows and tower projections, it follows that any width greater than the fourteen feet authorized by the general rule is unlawful.

There remains to be noticed another effect of the regulations. It is manifest that they require that bay windows and tower-projections shall be so constructed that both of their side walls shall touch and project from the building line; in other words, that a such a structure must not only start from the building line on one of its sides, but return to it on the other. This much is indicated by the very phrase "projections from the building line." Moreover it is provided, in respect of buildings less than thirty-five feet wide, that, in making these projections, a certain amount of "building line must be preserved, * * spaced as approved by the inspector of buildings." This means that a part of the front of a building having a bay window or tower-projection shall consist of a wall standing on the building line, and that determines that the projection must, on both of its sides, project from that line. Now, although this provision is predicated of buildings less than thirty-five feet wide, and is not repeated in the next clause relating to wider buildings—which only provides that the aggregate of the several projections may amount to a certain percentage of the front of the building—it can not be supposed that the general rule ceases in such cases to be applicable to each projection. The rule must require, then, that in this case also the two projecting walls must start from the building line from which the structure projects. Now, it was precisely a disregard of this requirement that made possible the sort of structure permitted in this case. The projecting wall of the alleged tower-projection starts from the building line of Massachusetts avenue at the east side of the door entrance, and never returns to any building line until it has gone around the apex of the lot and re-

93 turned to the building line of M street at the east side of the door entrance on the latter street. This so called "projection" is not, in

the sense of the regulations, a bay window projection or a tower projection from either Massachusetts avenue or M street. It simply has the effect of a wall enclosing the defendant's lot at some distance from the building line of either street. To the eye such a plan of construction suggests a large house built around a smaller holding; not such projections from that holding as Congress intended the Commissioners to authorize, nor such as their regulations actually permit. We think that this structure violates both the letter and spirit of the building regulations.

The law has been most liberal in its concessions to the owners of private property in Washington, and especially to owners of property abutting on the parked avenues and streets. They have been permitted to adorn and enjoy the public spaces in front of their houses as if these were their private gardens. But the private holder has been reminded by the same law that even the very concessions which he enjoys are not made solely for his individual benefit, but also for the common welfare and enjoyment. In the language of the Commissioners' answer, it was as part of "a general plan for the improvement of the streets and avenues" that these parks were laid out, and they are still to be regarded as simply the adorned portions of the streets. In contemplation of law and of this street scheme, the common interest in their preservation is just as positive as it is in the preservation of the roadways. When they were withdrawn by law from public travel, they were not wholly withdrawn from public enjoyment. Their public uses are wholly different, but in the eye of the law they are equally substantial. Beauty of surroundings and the gratification of taste may be provided for public use and benefit, just as comfort and safety of travel are so provided; and this interest of the public has been distinctly considered and
94 recognized in the establishment of these parks, and in the provisions for their adornment, and for their maintenance and preservation. It is therefore not a matter of easy tempered indifference that these spaces should be narrowed by unlawful structures, even to a small extent, nor even if such structures may offer the apology of being ornamental. If there is a remedy by which it can be done, it is especially important that the beginnings of such wrongs should be stopped before they become common and more serious by toleration. We have to consider, then, whether the proper remedy has been sought in this case.

It was suggested at the argument, on the part of the defendants, that there is nothing peculiar in the ownership of the streets of Washington by the United States which should determine the nature of the remedy, since it had been decided in the case of Van Ness vs. the Mayor &c. of Washington, 4 Peters, 232, that the United States might sell them. But we do not so understand the effect of that case. Throughout the opinion of Mr. Justice Story, speaking for the court, it was plainly recognized that the streets there in question were held by the United States in its political character. The true purport of that decision is well expressed in the syllabus prefixed by Mr. Curtis: "The streets and public squares of the city of Washington having been conveyed by the proprietors of the lands to trustees 'for the use of the United States,' Held: That the United States owned the lands in fee-simple, and, in connection with certain public improvements, might sell portions of the same which were no longer useful as streets, and make title thereto." It is plain that nothing in this case places the United States on the footing of an ordinary property-owner in

respect of the question before us. These streets are held by the United States as property, but in its capacity of a political body, and an encroachment upon such property is encroachment upon the sovereign, and is what is called purpresture.

95 Jurisdiction of cases of this kind seems to have been exercised chiefly by the equity side of the exchequer, "which had," as Chancellor Kent observed, in Attorney-General vs. Utica Ins. Co., 2 Johns. Ch., 382, "an appropriate jurisidiction, touching the property of the crown." It is a recognized part of the jurisdiction, however, of the courts of equity. Story says: "The jurisdiction is applicable not only to public nuisances, strictly so called, but also to purprestures upon public rights and property. Purpresture, according to Lord Coke, signifies a close or enclosure; that is, when one encroaches, or makes that several to himself which ought to be common to many. The term was, in the old law writers, applied to cases of encroachment, not only upon the king, but upon subjects. But in its common acceptation it is now understood to mean an encroachment upon the king, either upon part of his demesne lands, or upon rights and easements held by the crown of the public, such as upon highways, public rivers, forts, streets, squares, bridges, quays, and other public accommodations." 2 Eq. Jur., sec. 921. In this country the jurisdiction applies to encroachments upon the State.

Early in this century the courts of equity still spoke of the rare use of their jurisdiction of cases of nuisances; Attorney-General vs. Utica Ins. Com. 2 Johns. Ch., 382. Attorney-General vs. Clever, 8 Ves., 217, 218. In the first of these case' Chancellor Kent remarked that, in cases of public nuisances, in the only cases in which it had been exercised, that is, in cases of encroachment on the King's soil, it had lain dormant for a century and a half, from Charles 1, down to the year 1795. Nevertheless it is now firmly established, upon the principle that equity can give more adequate and complete relief than can be obtained at law. City of Georgetown vs. The Alexandria Canal Company, 12 Peters, 98. The only case of purpresture decided by the courts of the United States to which we

96 can refer is the United States vs. Brighton Ranche Com., 26 Feb. Rep., 218; Id. 25, Feb. Rep., 465. This case came up first on exceptions to the answer, before Brewer, circuit judge, and Dundy, district judge, at the May term, 1885, of the circuit court of the district of Nebraska. Judge Brewer said: "The defendant has built a fence, partly on his own land and partly on land belonging to the Government, and including a tract of several thousand acres. This is an action in equity to compel, by mandatory injunction, the defendant to remove its fence from the Government land, and thus leave the enclosed Government land free from all obstruction to approach. Of course the Government title is conceded, and its right to proceed by an action of ejectment to remove the defendant from occupancy of any of its land is unquestioned. The question made is whether the Government can come into a court of equity and avail itself of the summary remedy given by such a court. We are of opinion that it can; and, whether the act of the defendant comes within the technical definition of purpresture or that of a public nuisance, we are of the opinion that the Government can come into a court of equity, and by its orders have an end put to this trespass on the public right. We think, too, an action of injunction is the appropriate remedy, and that an action

of ejectment would not furnish full protection to the Government. Generally speaking, any encroachment upon the public domain may be restrained or ended by injunction; and in this case it was not the mere fact that the fence is built upon Government land; because such fence operates not only as an entry upon the particular land upon which the fence was built, but also to separate the enclosed lands from the general body of the public domain."

This last observation indicates that the purpresture was also a nuisance; and it will be observed that, in the case at bar, the encroachment is not merely an entry upon the particular space occupied by the intruding structure, but operates to impair a system of street arrangement
97 and improvement; thus adding to the purpresture, as in the case cited, another ground for equitable interference.

The same case came on for final hearing at the November term, 1885, before Mr. Justice Miller, sitting as Circuit Justice. As the report is brief, we think it important to quote the whole case, since the statement of facts shows the firmness of the court's attitude on this question:

"This is a suit on behalf of the United States to obtain a mandatory injunction against the Brighton Ranche Company to compel it to remove a barbed wire fence 57 miles long, inclosing 52,000 acres of the public lands of the United States. The testimony disclosed that this fence stood partly on deeded lands, school lands, and lands entered under the homestead, pre-emption, and timber culture laws of the United States. The testimony further disclosed that the fence was erected on these entered lands with the permission of the settlers. Inside the fence were a large number of acres of vacant public lands.

Miller, Justice, said: "I am of opinion that the United States is entitled to its injunction mandatory as to so much of the fence complained of as exists, and prohibitory as to building any future fences, so far as either of them comes within the following principles: (1) There exists no right in the defendants to build any fence on the lands of the United States. (2) All lands are, for this purpose, lands of the United States so long as the legal title remains in the United States. (3) It is the right of the United States and its duty to protect all such lands from this misuse in cases where there have been any kind of entries, whether of pre-emption, homestead, or private entry, though the purchase money be paid, so long as the legal title remains the United States; except where these latter parties build their own fences, or give express license to others to do it. In these cases it holds the title in trust, and can maintain this bill to remove the fence or prevent its erection. A decree should be entered based on these principles."

98 In this case the jurisdiction of equity to put an end to encroachment on the sovereign's soil was applied where the sovereign held the legal title only in trust, and where the whole equitable interest was in private persons, on the ground that an interest and duty to protect the legal title from encroachment still remained in the sovereign; both having become, indeed, only the more serious by virtue of the trust. On this principle, whenever the Government holds the soil for any kind of public benefit, this duty to protect it from encroachment must exist, and the courts of equity must have jurisdiction to aid in its performance. Indeed the highest and the true ground of the right of equity courts in this country

to apply their summary remedies in cases of purpresture is, that the Government is not to be interrupted in its functions and duties, and is therefore peculiarly entitled to remedies which shall prevent or directly put an end to encroachments which tend to such interruption.

And if there is any case to which such considerations especially apply, it is to encroachments upon the streets and squares of the city of Washington, and that for the reason that this city was established under the Constitution for the seat of Government. Because of its origin and its purposes, the Government owes to the nation a peculiar duty to preserve and adorn it. It is not for its residents alone that its streets are bordered with parks and its squares are decorated. It has at last become in fact what it was designed to be—the nation's city. Sixty years ago its status and destiny were defined by the Supreme Court in the very case which decided that the United States might sell such of its streets and squares as should be found useless. In demonstrating that the original proprietors must have understood the full effect of their conveyance, the court said: "They might well, and indeed must, have placed a just confidence in the Government, that, in founding the city, it would do no act which would obstruct the
99 prosperity or interfere with its great fundamental objects and interests. It could never be supposed that Congress would seek to destroy what its own legislation had created and fostered into being. On the other hand, it must have been as obvious that as Congress must forever have an interest to protect and aid the city, it would, for this very purpose, be most impolitic and inconvenient to lay any obstructions to the free exercise of its power over it. The city was designed to last in perpetuity, Capitoli immobile saxum." Van Ness vs. City of Washington, 4 Peters. 232.

Surely a court of equity can have no more appropriate office than the protection of a plan devised in such a spirit against the encroachments of individuals. The particular effect of a single instance of instrusion may not be serious, but toleration of a single instance is an invitation for another, and an ornamental intrusion is no more to be tolerated than one that is hideous.

When this bill was filed the structure complained of had only been begun; but, with knowledge that this court was charged with the determination of its character, and that its judgment might be adverse, it has, as we learned at the argument, been carried towards completion. The comment of the Supreme Court upon a similar course pursued by the defendant in the Wheeling Bridge Case, 13 How., 578, is applicable in all such cases. "The bridge company," said the court, "had legal notice of the institution of the suit, and of the application for an injunction to stay their proceedings, before their cables were thrown across the river. This should have induced them to suspend, for a time, their great work, alike creditable to the enterprise of their citizens and the genius and science of the engineer who planned the bridge and superintended its construction. It is a matter of regret that, by the prosecution and completion of the bridge, they have incurred a high responsibility."

100 The course pursued by the court in that great case is a precedent which we cannot disregard, when we reach the conclusions which we have commenced. The bridge was nearly a thousand feet between the abutments, and was completed at immense cost. Yet the court, having

decided that, at its existing height, it interfered with the navigation of the Ohio River, did not hesitate to say that, unless it should be raised to a certain height, the bridge must be abated.

Holding the opinion which we have expressed, we can arrive at but one result. So far as this structure is an unauthorized intrusion on the public space it should be abated.

A decree will be drawn according to these principles.

(Diagram marked p. 101 follows.)

102 *Final decree of injunction—Filed Feb. 28, 1890.*

In the supreme court of the District of Columbia. In general term.

THE UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
ANNIE A. COLE, JOHN W. DOUGLASS, CHARLES W. Raymond, Lemon G. Hine, and Thomas B. Entwistle, defendants. } Equity, No. 11451.

This cause came on to be heard in the general term in the first instance upon the bill of complaint, the answers of the several defendants, the stipulation of counsel as to parties defendant, and all other the papers and proceedings therein, and was argued by counsel, upon consideration whereof the court being of opinion that that part of the building referred to and described in the pleadings, and shown in the exhibits annexed to the bill and answers, which occupies land to the eastward of a line drawn north and south through the eastern appex of the defendant Cole's private holding, as well as those and all those parts of each of the several bay
103 window or tower projections of said building from the Massachusetts avenue building line, and from the M street building line of the said holding as are in excess of a frontage measurement of fourteen feet for each of said projections have no lawful warrant for their being, but constitute a upon the lands of the plaintiffs (to wit, upon those parts of Massachusetts avenue and M street, respectively, which have heretofore been set aside for ornamental purposes and are commonly known and designated as parking) and a public nuisance; it is therefore, by the court, this twenty-eighth day of February, A. D. 1890, ordered, adjudged, and decreed that said parts of said building ought to be abated and removed, and the said defendant, Cole, is hereby enjoined and required to abate and remove the same accordingly, within sixty days from the date hereof, and within thirty days thereafter to restore those parts of said parking land now occupied by those —— portions of said building hereby decreed to be removed to the same condition in which they were at the time of the commencement of the erection of said building.

104 And it is further ordered, adjudged, and decreed that the said defendant Cole, her agents, servants, and employees, heirs and assigns, be, and they are hereby, perpetually enjoined after said portions of said building are so abated and removed as aforesaid from rebuilding or replacing the same or any part thereof.

And it is further ordered, adjudged, and decreed that the defendant

all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

(Signed) ANNIE A. COLE. [SEAL.]
FRANKLIN TENNEY. [SEAL.]

Sealed and delivered in presence of—
MARY LAWTON.

The above bond is satisfactory to me both as to amount and surety.
(Signed) JNO. BLAIR HOGE,
U. S. Attorney, D. C.

MARCH 7, 1890.

The above bond and surety approved.
(Signed) E. F. BINGHAM, *C. J.*

MARCH 7, 1890.

110 *Authentication of record.*

Clerk's office, supreme court of the District of Columbia: Clerk's certificate.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 16th day of May, 1890.
[SEAL.] R. J. MEIGS,
Clerk.

By
Assistant Clerk.

Justice's certificate.

I, E. F. Bingham, chief-justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 16th day of May, 1890.
E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief-justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 16th day of May, 1890.
[SEAL.] R. J. MEIGS,
Clerk.

By
Assistant Clerk.

(Indorsement on cover:) District of Columbia, supreme court. No. 1435. The United States, appellant, vs. Annie A. Cole. No. 1436. Annie A. Cole, appellant, vs. The United States. Filed October 17, 1890. Supreme Court, U. S., clerk's office. Received Oct. 17, 1890.

Office Supreme Court U. S.
FILED.
DEC 15 1890
JAMES. H. McKENNEY.
CLERK.

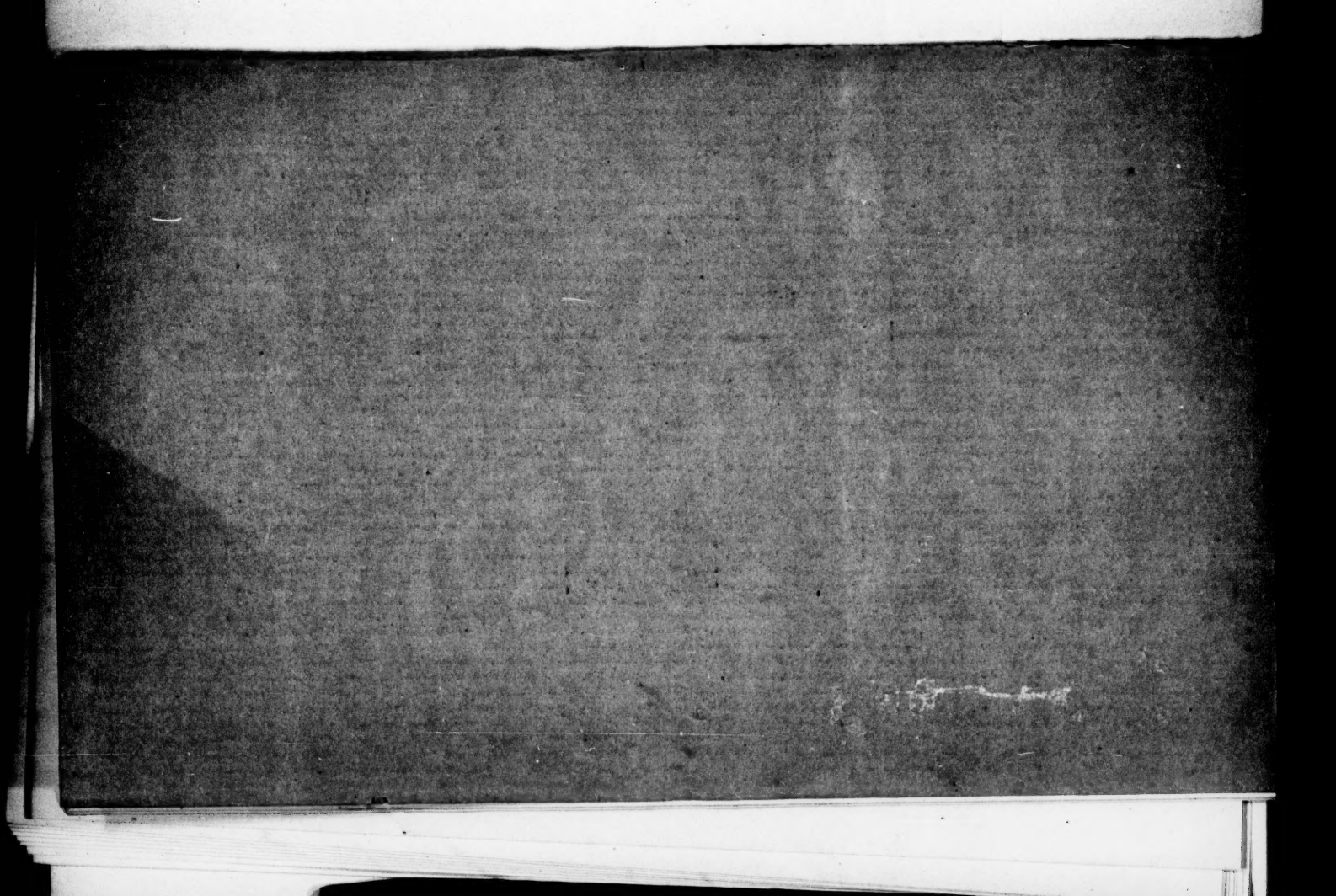
In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES
vs.
ANNIE A. COLE. } No. 1435.

ANNIE A. COLE
vs.
THE UNITED STATES. } No. 1436.

MOTION TO ADVANCE.



In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES
vs.
ANNIE A. COLE. } No. 1435.

ANNIE A. COLE
vs.
THE UNITED STATES. } No. 1436.

MOTION TO ADVANCE.

And now, December 15, 1890, comes the Attorney-General, on behalf of the United States, and moves the court to advance upon its docket and to set down for an early hearing the above-named cross appeals for the reasons hereinafter stated.

These are cross appeals from a decree of the supreme court of the District of Columbia on a bill of complaint in equity filed by the United States in that court. The bill alleged that Annie A. Cole was the owner of a triangular piece of ground in the city of Washington, having a frontage of 126 feet, more or less, on the north side of M street, and of 115 feet, more or less, on the southerly side of Massachusetts avenue, and having a third line of

51 feet, more or less, on the westerly boundary of said piece, extending from Massachusetts avenue to M street; that the apex of said triangular parcel was the easternmost point thereof; that Mrs. Cole had built upon a portion of this lot a three-story and basement brick dwelling house, leaving the eastern end of the triangle, the apex end, having a frontage of 55 feet on M street and 52 feet on Massachusetts avenue, vacant and unoccupied; that in September, 1888, she began the building of the foundation walls of a new structure upon this vacant triangular piece; that, acting under the pretended authority of one Entwistle, who, as an inspector of buildings, so called, gave her a pretended permit, issued with the consent of the Commissioners of the District, she placed nearly one-half of said building upon the property of the United States, extending it beyond the line of her own property some 5 feet on each side of the triangle; that the so-called permit pretended to authorize the erection by the defendant, Cole, of an addition to the dwelling house already standing on the western portion of said lot, but that, in fact, it was being constructed as an independent dwelling house.

An injunction was asked against the defendant, Cole, to prevent her erecting the building and against the inspector of buildings and the Commissioners of the District to enjoin them from continuing to authorize the said building upon United States property. A motion for a preliminary injunction by the United States was refused by Justice Merrick on the ground that the United States could not be required to give bond.

In her answer, the defendant, Cole, relied for a defense on the permit and the building regulations of the District. The Commissioners of the District made a similar defense. The case was heard on the evidence in the general term, and that court found that the erections upon the property were not authorized under the building regulations of the District, and entered a decree ordering Mrs. Cole to abate the nuisance.

The court found that a building regulation which permitted a bay window 14 feet in length, and extending 5 feet from the building line at right angles, was permissible, but that the buildings in this case exceeded such limit. They also found that the circular building around the apex of the triangular piece of ground, and 5 feet from the point of the apex, was unauthorized by the building regulations.

The decree ordered a modification of the building in accordance with the findings. The United States appealed from so much of the decree as permitted Mrs. Cole to build upon any part of the public property. Mrs. Cole appealed from the decree in so far as it required her to change the house, which has been completed and occupied as a separate house since the beginning of the action.

The case, as will be seen from the foregoing statement, involves the question of the validity of the building regulations of the city of Washington in so far as they permit the occupation of public property by permanent structures of private individuals, and the further question whether such building regulations may be varied under a personal discretion conferred upon a so-called building inspector.

The necessity for an early decision upon the validity of these regulations, in view of the great number of new structures which are all the while being put up in Washington, is so manifest as to call for no further comment. It is respectfully submitted that the case should be advanced.

W. H. H. MILLER,
Attorney-General.

FILED.
DEC 23 1890
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890.

Nos. 1435 and 1436.

UNITED STATES, APPELLANT,

vs.

ANNIE A. COLE.

ANNIE A. COLE, APPELLANT,

vs.

UNITED STATES.

Appeal from the Supreme Court of the District of Columbia.

Reasons in Opposition to Motion to Advance.

On behalf of Mrs. Annie A. Cole, appellee in No. 1435 and appellant in No. 1436, it is respectfully submitted that these causes should not be advanced; and for the reason that the whole subject-matter is now pending before the Congress of the United States.

She built the house in controversy in this suit under the

specific authority of the Commissioners of the District of Columbia, and in accordance with a permit therefor issued by the inspector of buildings, under the personal direction of said Commissioners, and in pursuance of law and of the building regulations in force in the city of Washington. The Commissioners had been authorized by Congress to make building regulations for said city; and they accordingly made the building regulations now in force in the District of Columbia. Similar building regulations have existed in the District from the time of the foundation of the city. By these building regulations projections from the building line upon and over the streets for steps, porches, bay windows, railings, cellar areas, and the like are authorized in accordance with the extent and character of the buildings. These building regulations are found in the Record (pp. 12 to 31).

Section 7 of these regulations (Rec., p. 22) provides for these projections. It authorizes bay windows and tower projections not exceeding fourteen feet in width, unless approved by the Engineer Commissioner. Mrs. Cole's building was an extension of her former house, which had no projections, and the permit, which was given to her and which was approved by all the Commissioners and not by the Engineer Commissioner alone, allowed her a projection in excess of fourteen feet, but in proportion to her whole front, and in that proportion no greater than has been generally allowed. This allowance is the source of all the difficulty.

The bill of complaint, which, it may not be improper to say, was instigated by private persons influenced by selfish personal motives, took the extreme and absurd ground that every projection of every kind, whether for steps, windows,

doors, cellar areas, or anything else, was in violation of the proprietary rights of the United States in the streets of the city of Washington; and that, therefore, the vast majority of houses in the city, and probably all houses built within the last twenty-five years, were built in violation of law, no matter how much they may have conformed to the building regulations authorized by Congress.

The decision of the supreme court of the District of Columbia did not go to this extreme length. In fact, there was no pretense in the argument below that the building regulations were illegal, and it was only claimed that in this case there was an improper and illegal application of them; and it is a mystery why the United States should have appealed at all, when the decree gave them all that was claimed in argument. The decree below was that the projections appurtenant to Mrs. Cole's house, beyond the limit of 14 feet, were illegal and should be taken down. It was held that no projection could be made on what is most improperly called the apex of the triangle which constituted Mrs. Cole's lot, and that the delegation of power to the Engineer Commissioner to allow projections to a greater extent than fourteen feet was unauthorized by law and void. What this had to do with the case is not very apparent, inasmuch as Mrs. Cole's permit was specially authorized by all the Commissioners.

Mrs. Cole acted throughout under the authority of the Commissioners and in good faith in full reliance upon their power and right to grant her the permit which they granted. Since the decision of the lower court was rendered she has appealed to Congress to ratify the action of the Commissioners, and bills for her relief are now pending before both

Houses of Congress, and have been favorably reported by the proper committees of both Houses.

She believes that the honorable Attorney General, who makes this motion to advance, has been misled by the representations of persons hostile to her, and that the present motion is merely the result of the attempts of those persons to forestall the action of Congress on her behalf. Certainly he has been misled in reference to the statement in his brief that Judge Merrick refused the preliminary injunction asked for in the case on the ground that the United States could not be required to give bond. Judge Merrick did not base his decision on any such ground.

There is no public interest to be subserved by advancing this cause; and no public interest will suffer by the failure to have it advanced. The Commissioners have entirely revised their building regulations; and they now grant no permits except in full accord with the opinion and decision of the supreme court of the District of Columbia. The decision can now affect no interest beyond that of the complainant; and as her case is pending before Congress, it is respectfully submitted that there is no necessity for unusual haste on the part of the Court.

M. F. Morris,
Shellabarger & Wilson,
For Mrs. A. A. Cole.

Office Supreme Court U. S.
FILED.
APR 4 1891
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CLERK

Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, *Appellant*,
vs.
ANNIE A. COLE. } No. 1435.

ANNIE A. COLE, *Appellant*,
vs.
THE UNITED STATES. } No. 1436.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Annie A. Cole, appellee in the above-entitled cause No. 1435 and appellant in the above-entitled cause No. 1436, comes and respectfully shows that subsequently to the appeals taken in said cause, the same being cross-appeals from the same decree of the supreme court of the District of Columbia, the subject-matter of the controversy between the parties came before the Congress of the United States and was pending before Congress when the motion was made by the Attorney General to advance the said causes for hearing, and that subsequently, on the 3d day of March, A. D. 1891, by a provision inserted in the act approved on said last-mentioned day and designated as an "Act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1891, and for prior years, and for other purposes," Congress legalized and approved the structure of the said appellee, Annie A. Cole, which was the